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THE CRUSADE

AGAINST

THE CONSTITUTION

AN HISTORICAL VINDICATION

OF

THE HOUSE OF LORDS.

BY

SIR WILLIAM T. CHARLEY, Q.C., D.C.L.

AUTHOR OF 'CONSERVATIVE LEGISLATION FOR THE WORKING CLASSES,' 'THE REAL PROPERTY ACTS,' AND 'THE SUPREME COURT OF JUDICATURE ACTS.'

'IMPERIUM ET LIBERTAS.'

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PREFACE

'THE next General Election will be fought, not upon Disestablishment, or Home Rule, or the Liquor Traffic, but upon the question of the House of Lords, which includes and represents them all.[1] It is the greatest constitutional question that has arisen in England for two centuries or more.'

This was the language of the present Prime Minister at Bradford.[2] It affords an ample justification for the appearance of this work.

As the Church of England is, like the House of Lords, an integral part of the Constitution, this work has, necessarily, been written from a Church of England standpoint.

It has also been written, to some extent, from a Conservative point of view. This is due to the fact that the Radical party have been its sole assailants; but the maintenance of the House of Lords, as an integral part of the Constitution, is so vital to the existence of the British Empire, that it towers above the region of politics.

The conclusions at which I have arrived are based upon the best constitutional authorities, whose language, wherever

[1] 'Lord Rosebery desires that all interests should have but one neck, and he will strike it through with a single blow in abolishing the House of Lords.' Lord Salisbury at Edinburgh, October 30, 1894. See the *Times* of October 31, 1894.

[2] The Earl of Rosebery's speech at St. George's Hall, Bradford, on Saturday, October 27, 1894, *Daily News*, October 29, 1894.

it has been practicable, I have given in preference to my own. Every statement is fully vouched for.

I have brought to light, I submit, sufficient rebutting testimony to show that such a writer, for example, as the author of 'Fifty Years of the House of Lords,' commended by Mr. Gladstone in his last speech as Prime Minister in the House of Commons, has established no case whatever against the House of Lords.

One result borne in upon one's mind from a study of the Parliamentary Debates since 1832, when Mr. Gladstone first entered Parliament, is 'the painful, but firm conviction' that Mr. Gladstone, (who now says that 'the case of the House of Lords for fifty years' prior to 1881, 'in the exercise of its Legislative functions,' is 'a case upon the whole grievously unsatisfactory,') maintained for years and years, by voice and vote, the views to which the House of Lords gave, consistently, expression. Mr. Gladstone tells the 'National Liberal Federation,'[1] that, as regards the legislation of which that Radical body approves, 'concurrence is all that I can claim.' This is literally true. Omnivorous receptivity—the assimilation of the views of others to whom, for years and years, he was bitterly opposed—has been the distinguishing feature of Mr. Gladstone's career. 'I conceive,' he observes, 'that the facts of my Parliamentary history will obtain a conspicuous notice in the page of history.' I have taken care to give them, at all events, 'conspicuous notice' in this 'Historical Vindication of the House of Lords.'

W. T. CHARLEY.

QUEEN ANNE'S MANSIONS,
ST. JAMES'S PARK.

[1] *Daily News*, August 17, 1894.

'Such an arrangement—*the childish proposal* that the "veto" of the House of Lords shall be taken away, while it is still to remain a Legislative Assembly—would be as much *government by a single Chamber* as if the Second Chamber were abolished. It would have every practical disadvantage of that form of constitution, and would be, in addition, exceedingly ridiculous. Does Lord Rosebery mean a Second Chamber of straw?'—The Marquess of Salisbury, K.G., in the *National Review* for December, 1894.

'The Conference considers it absolutely necessary, for the maintenance of the Constitution, for ensuring the good government of the country, and for the preservation of individual liberty, that the House of Lords should be upheld.'

Resolution moved by Sir Frederick Dixon-Hartland, Bart., M.P. (a former Chairman of the Council of the National Union), and seconded by Sir William Charley, Q.C., D.C.L. (City of London), and carried, with acclamation, by the delegates from all parts of England [1] assembled in Conference at Newcastle, November 13, 1894.

[1] Delegates from Belfast were also present. The Resolution was supported by Mr. Macartney, M.P., Mr. Oswald (Birmingham), Mr. Fielding (Manchester), Mr. Gibb (Brighton), Mr. Dennison (Liverpool), Sir Stafford Northcote, Bart., M.P., and the Chairman (Mr. Ranken, M.P.).

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THE CRUSADE AGAINST THE CONSTITUTION

CHAPTER I

THE DIGNITIES, PRIVILEGES AND JURISDICTIONS OF THE HOUSE OF LORDS

THE House of Lords is distinguished by peculiar dignities, privileges and jurisdictions.

Peers, individually, enjoy the rank and precedence of their several dignities, and are hereditary counsellors of the Crown. Collectively, with the lords spiritual, they form a permanent council of the Crown, and, when assembled in parliament, they form the highest court of judicature of the realm, and are a co-equal branch of the legislature, without whose consent no laws can be made. Their judicature is of various kinds—viz. for the trial of peers, for determining claims of peerage, and offices of honour, under references from the Crown, for the trial of controverted elections of Scotch and Irish peers, for the final determination of appeals from England, Scotland and Ireland; and, lastly, for the trial of impeachments.[1]

The word 'parliament,' now applied to both Houses, originally denoted the House of Lords alone. Hence the office of the House of Lords is still called 'the Parliament

[1] *First Report of the Lords' Committee on 'The Dignity of a Peer,'* p. 14.

Office,' and its chief clerk is styled in his commission from the Crown 'the Clerk of Parliaments.' [1]

Mr. Pike, of the Record Office, who is the editor of the Year Books published under the direction of the Master of the Rolls, points out in his learned work on 'the Constitutional History of the House of Lords,' [2] that 'the first assembly in England to which the word "parliament" has been applied by any legal authority was an assembly resembling the House of Lords in its constitution.'

We shall see presently that, in a judicial sense, the House of Lords is the entire parliament still.

For the sake of convenience, it will be desirable to deal separately with the legislative and the judicial powers of the House of Lords, although they were nearly coeval in their origin.

CHAPTER II

ANGLO-SAXON TIMES—THE WITENAGEMOT

THE members of the House of Lords are simply those amongst Englishman, earls, bishops, and some other more modern classes, who have never lost the right of personal attendance because they have never lost the right to a personal summons. They represent, by unbroken succession, the Witan of the Gemot of Salisbury and of all the Gemots before that.[3]

The Great Council, by which an Anglo-Saxon king was guided in all the main acts of government, bore the appellation of 'Witenagemot,' or 'the assembly of the wise men.'

All the Anglo-Saxon laws express the assent of this council.

Prelates and nobles—the original of the lords spiritual and temporal—sat in the Witenagemot.

[1] The salary of the Clerk of Parliaments is at present 1,000*l.* a year more than that of the Clerk of the House of Commons.

[2] Chap. iii. pp. 23–25, citing the Year Book, 21 Edward III. fo. 60 (No. 7), which refers to an assembly held A.D. 1081.

[3] *History of the Norman Conquest* (v. 410), by Edward A. Freeman, D.C.L., LL.D.

The nobles were called 'thanes.'[1]

The title of 'duke' during Anglo-Saxon times occasionally formed somewhat of an official style; but it signified, generally, a leader ('dux') of the people.[2]

The title of 'earl' ('eorl'), in Anglo-Saxon times, originally meant 'a man of noble birth,' as opposed to the 'ceorl' or 'churl.' Some time prior to the Norman Conquest, it became a title of office, signifying 'the governor of a province.'[3] These provincial governors frequently became so powerful as to overshadow the throne. In the time of King Edward the Confessor the authority of the Crown was almost annihilated by five earls, amongst whom the whole kingdom was divided. Of these earls, Godwin's jurisdiction (and, after his death, that of his second son, Harold) embraced Kent, Sussex, and the southern parts of Wessex; and Harold was duke of East Anglia and governor of Essex.

Harold succeeded quietly to the throne, as Harold II.,[4] on the death of Edward the Confessor, on January 6, 1066. Nine months after his accession to the throne, he fell fighting bravely against the Normans, at the battle of Hastings, the site of which can still be seen from the terrace of Battle Abbey.

Of him, the first and last king of his race, the historian Hallam says that he was 'a prince well worthy to have founded a new dynasty, if his eminent qualities had not yielded to those of a still more illustrious enemy.'[5]

Very few at present imagine that there was any representative system in that age, much less that the ceorls, or inferior freemen, had the smallest share in the deliberations of the national assembly. Every argument, which a spirit of con-

[1] Hume's *History of England*, appendix, No. 1, p. 788.

[2] *The Historic Peerage of England, exhibiting the Origin, Descent, and Present State of every Title of Peerage since the Conquest*, by Sir Harris Nicolas, G.C.M.G. (edited by W. Courthope, Somerset Herald), p. lxii.

[3] Hallam's *Middle Ages*, vol. ii. chap. viii. part i. p. 274, n. (p).

[4] Edward 'the Outlaw,' the heir of the Anglo-Saxon line, had died in 1057, but his only son Edgar, 'the Atheling,' was alive.

[5] *Middle Ages*, vol. ii. chap. viii. part i. pp. 274, 275. See also the *Student's Hume*, chap. iv. pp. 60–69.

troversy once pressed into this service, has long since been victoriously refuted. We have not a hint of any numerous or popular body in the Anglo-Saxon code.[1]

Many political writers of the last century used to describe the Witenagemot as a genuine English parliament, annually elected by universal suffrage. Palgrave, Hallam and Kemble, however they may differ among themselves in points of detail, have effectually dispelled these monstrous and often mischievous delusions. The Witan was essentially an aristocratic body, summoned and presided over by the king.[2]

'Notwithstanding the learning and ingenuity which have been devoted to the inquiry,' says Lord Farnborough, better known as Sir Thomas Erskine May,[3] late Clerk of the House of Commons, 'no system of election, or political representation, properly so called, can be distinctly traced back to that time.'

Camden and Sir Henry Spelman, upon probing the antiquities of our constitution somewhat more exactly than their predecessors, declared that they could find no signs of the Commons in parliament till the 49th of Henry III. Prynne some years afterwards, with much vigour and learning, maintained the same argument; and Brady completed the victory. But it passed, at one time, for a surrender of popular principles, and almost a breach of privilege, to dispute the lineal descent of the House of Commons from the Witenagemot! Several pious frauds were practised to exalt the antiquity of our constitutional liberties. These began, perhaps, very early, when the imaginary laws of Edward the Confessor were so earnestly demanded. They were carried further under Edward I. and his successor, when the fable of privileges granted by the Conqueror to the men of Kent was devised, when Andrew Horn filled his 'Mirrour of Justices'

[1] See Hallam's *Middle Ages*, vol. ii. chap. viii. part i. p. 279; and notes to chap. viii. (vol. ii.) p. 376.

[2] See *The Rise and Progress of the English Constitution*, by Sir Edward Creasy, chap. iv. p. 51.

[3] *Parliamentary Practice*, 9th edit. chap. i. p. 17.

with fictitious tales of Alfred; and, above all, when the 'Method of holding Parliaments in the time of Ethelred' was fabricated, about the end of Richard II.'s reign.[1]

CHAPTER III

ANGLO-NORMAN TIMES

THE *Curia Regis*, as established in England by William the Conqueror, did not differ in any material point from the Witenagemot of Anglo-Saxon times.[2]

It was essentially of the same composition as the Witenagemot, consisting of prelates and nobles, the king's thanes being replaced by the barons.[3]

The lords spiritual sat by a double title—by prescription, as having always possessed that privilege through the whole Anglo-Saxon period, from the first establishment of Christianity, and by their right of baronage as holding of the king *in capite* by military service, which, if there be any consistency in law, must unequivocally distinguish them from commoners. These two titles of the prelates were never accurately distinguished.[4]

It has been frequently maintained that the lords spiritual sat in parliament only by virtue of their baronial tenure. I think this is too contracted a view, for a great council of advice and assent in matters of legislation was essential to all the northern governments. And all of them (except, perhaps, the Lombards) invited the superior ecclesiastics to their councils, not upon any feudal notions, which at the time had hardly begun to prevail, but, chiefly, as representatives of the church and of religion itself; next, as more learned and enlightened counsellors than the lay nobility; and, in some

[1] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 33–35.

[2] See *The Rise and Progress of the English Commonwealth*, by Sir Francis Palgrave, chap. xxi. p. 653.

[3] See Hallam's *Middle Ages*, notes to chap. viii. (vol. iii.) p. 213.

[4] Hume's *History of England*, appendix ii. p. 796 (The Feudal and Anglo-Norman Government and Manners), and Hallam, *ubi supra*.

degree, no doubt, as rich proprietors of land. It will be remembered, also, that ecclesiastical and temporal affairs were originally decided in the same assemblies, both upon the Continent and in England. The Norman Conquest could not affect the immortality of Church possessions. The bishops of William's age were entitled to sit in his councils by the general custom of Europe, and by the common law of England.[1]

Not unfrequently it is asserted[2] that the lords spiritual are not peers, only 'Lords of Parliament.' But this is quite a fallacy. The statute 25 Edward III. cap. 6 contains a legislative declaration of the peerage of bishops. 'A bishop's temporalities shall not be seized for contempt, because they are peers of the land'—'Pares terræ.'

The reason why the lords spiritual were not tried by peers of the realm, like lords temporal, was that they declined to claim privilege of peerage, claiming, as bishops anointed, total exemption from the jurisdiction of any secular court whatever.[3] They claimed benefit, not of peerage, but of clergy. The lords spirituals have, however, the right to be present up to the point at which judgment is to be given at the trial of a temporal peer.[4] It is contrary to the canons of the Church for them to be present when the trial reaches the stage of passing a sentence of death—a sentence, to put it broadly, 'affecting life or member.'[5]

This difficulty was formerly met by the prelates appointing a lay procurator as their 'collective proxy,' to represent them during the whole trial. Thus in the 21 Ric. II. the prelates appointed a layman,[6] 'Monsieur Thomas de Percy,'

[1] Hallam's *Middle Ages*, vol. iii. chap viii. part iii. pp. 4, 5, and note 1, p. 204.

[2] Mr. Pike, *Constitutional History of the House of Lords*, c. ix. p. 162, says that 'a bishop was a peer, but not a spiritual peer,' 'as he derived his only claim to that title of honour from his lay fees.' But his (so-called) 'lay fee' was one of the incidents of his position *as a bishop*. The barony was parcel of the bishopric.

[3] See Pike's *Constitutional History of the House of Lords*, chap. xi. pp. 213, 214; also chap. v. p. 60.

[4] *Ibid.* chap. xi. p. 227.

[5] *Ibid.* chap. xiv. p. 325.

[6] *Rot. Parl.* 21 Ric. II. Nos. 9-16 (iii. 348-351).

to represent them, and he sat and voted at the trial of an archbishop for high treason.[1]

The lords spiritual, who, though forming a separate estate in parliament, have always been so united with the temporality that the suffrages of both upon every question have always been told numerically without any distinction, composed in general before the Reformation a majority of the House of Lords.[2]

The lords temporal, in Anglo-Norman times, consisted only of earls and barons. Every earl was also a baron, and held an honour, or barony, of the crown, for which he paid a higher relief than the ordinary baron.[3]

The title of 'duke' as a territorial and hereditary dignity was merged in the Crown until the reign of Edward III.

'The king,' says Sir Henry Spelman,[4] 'is universal lord of his whole territories, and no man possesseth any part thereof but derived from him, either mediately or immediately. Those who received their territories immediately rom the king were said to hold them "in capite," for that the king is "caput Regni." They were called "Magnum Consilium Regni," for that in those times it belonged only to them to consult with the king on matters of the kingdom, insomuch as no other in the kingdom possessed anything but under them. And, therefore, the agreement or disagreement of the chief lord, or him that held "in capite," concluded all that depended on him, or claimed under him, in any matter touching his fee.'

[1] Mr. Pike, who invariably leans against the status as peers of the lords spiritual whenever he can, is constrained to admit that 'the fact that the proxy of the prelates sat and voted on a trial for treason would go far to show that the right to sit and vote was now considered to be inherent in them, *if they chose to exercise it.*' 'It might then,' he adds, 'very fairly be argued that if they had the right to try other peers, they had also themselves the right to be tried by peers, *if they were only willing to exercise it.*'—*Constitutional History of the House of Lords*, chap. x. p. 207. See chap. xi. p. 218.

[2] Hallam's *Constitutional History of England*, vol. iii. chap. xiii. p. 34.

[3] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 6.

[4] *Reliquæ Spelmannianæ.* Posthumous works of Sir Henry Spelman, relating to the Law and Antiquities of England ('Of Parliaments'), pp. 57, 58.

From their great property the nobles (and through them their numerous tenantry) were deeply interested in almost every legislative enactment, and so extensive was their influence that the royal authority could not, without their concurrence, carry any law into execution. Hence their presence in the national councils was exacted as a duty, and every unjustifiable failure on their part to attend was punishable as a breach of that fealty which they owed to the Crown.[1]

The liability to a summons was a burthen incident to the possession of land; attendance was compulsory; and the only way of escape from it was by appointing a proxy.[2] The summons, however, might issue or not, at the king's pleasure. The number summoned to the earlier parliaments varied greatly. The king exercised the power of selection; but to be capable of being summoned, it was necessary that the person called upon by the king to advise him should have a barony or part of a barony. 'It is permissible,' says an old legal authority, 'for baronies to be granted by kings, in order to have discerning persons of the realm part of the council, in such manner that they may be capable of being summoned to the king.'[3]

Although it is true that feudal principles were applied to the constitution of the House of Lords, it is not true, as alleged by a recent able writer,[4] that 'the House of Lords had its origin in the Feudal System.'[5] But it is quite true, as stated by the same writer,[6] that 'it was in virtue of the duties imposed upon them by the feudal system of government' that

[1] The *History of England*, by John Lingard, D.D., vol. ii. chap. xv. pp. 366, 367.

[2] See chap. xxix. (Reform of the House of Lords) *infra*.

[3] Britton, lib. ii. cap. 3, sect. 3; and see on this subject chap. vi. (pp. 90-107) and chap. vii. of *The Constitutional History of the House of Lords*, by L. O. Pike, of the Record Office.

[4] *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, LL.B., Barrister-at-Law (1894), chap. iii. p. 23.

[5] 'Every man in Anglo-Saxon times was supposed to have a lord. The lordless man was indeed in evil plight. He might be slain as a thief.' Laws of King Athelstane I. *Ancient Laws and Institutes*, p. 85, cited in *The Constitutional History of the House of Lords*, chap. i. p. 6.

[6] *Ibid.* p. 24.

'the tenants in chief of the king, the barons by tenure, were entitled to be summoned by writ to the king's council;' 'they were responsible, so far as their own fiefs were concerned, for the military defence of the realm; through them the exchequer was replenished; and upon them devolved, to a great extent, the maintenance of order and the administration of the law in their several baronies. The interests of their feudatories were their interests; the prosperity of their feudatories was their prosperity.' The indissoluble connection of the enjoyment and dignity of property with the discharge of public duties was the pre-eminent merit of feudalism, and it is one of the special excellences of English institutions that they have, in a great measure, preserved this connection, notwithstanding the necessary dissolution of the feudal system. This achievement has been the result of more than one agency, and of the accumulated traditions of many generations.[1]

The eminently popular character of the English aristocracy is of very early date, and it has probably done more than any other single cause to determine the type and ensure the permanence of English freedom.

The causes of the liberal tendencies that have so broadly distinguished the English nobility from those of most other countries are to be found, not only in the traditions of its early history, but also in the constitution of the order.[2]

The peer holds a great position endowed with substantial powers and privileges, and these powers and privileges are handed on by hereditary succession. But they are handed on only to one member of the family at a time.[3] While the blood of a peer is said to be ennobled, it is ennobled with a nobility so high that it cannot pass to more than one even of his own descendants.[4]

But although only one at a time can enjoy these powers and privileges, the peer's blood is endued with a capacity of

[1] *History of England*, by W. E. H. Lecky, vol. i. chap. ii. p. 174.
[2] *Ibid.* pp. 170, 171.
[3] *Encyclopædia Britannica*, xvii. 525 (Title 'Nobility').
[4] *Ibid.* xviii. 460 (Title 'Peerage').

inheritance which pervades the whole of his descendants. This capacity might formerly have been lost by corruption of blood, arising from attainder for treason or felony.[1]

The great peculiarity of the baronial estate in England, as compared with that of the Continent, is the absence of the idea of caste. The English lords do not answer to the nobles of France, or to the princes and counts of Germany. English nobility is merely the nobility of the hereditary counsellors of the Crown, the right to give counsel being involved, at one time, in the tenure of land, at another in the fact of summons, at another in the terms of a patent. The nobleman is the person who, for his life, holds the hereditary office, denoted or implied in his title.[2]

It is universally agreed that the only baronies known for two centuries after the Conquest were incident to the tenure of land, held immediately of the Crown.[3]

CHAPTER IV

(1) King John

The Great Charter of our Liberties

It is to the House of Lords alone that we owe the Great Charter of our Liberties. No House of Commons existed in A.D. 1215, when it was obtained.

The obtaining of the Great Charter was the first effort towards a legal government, and it is beyond comparison the most important event in our history, except that Revolution without which its benefits would have been rapidly annihilated. It is still the keystone of English liberty. All that has since been obtained is little more than as confirmation, or

[1] See, on this subject, chap. viii. of Pike's *Constitutional History of the House of Lords*. By a recent statute (33 & 34 Vict. cap. 23, sect. 1) 'No confession, verdict, inquest, conviction, or judgment, of or for any treason or felony, shall cause any attainder or corruption of blood.'

[2] *Constitutional History of England*, by Dr. Stubbs, Bishop of Oxford (late Regius Professor of Modern History, Oxford), ii. 176.

[3] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 6.

commentary; and, if every subsequent law were to be swept away, there would still remain the bold features that distinguish a free from a despotic monarchy.[1]

But what we are most to admire is the prudence and moderation of those haughty nobles themselves, who were enraged by injuries, inflamed by opposition, and elated by a total victory over their sovereign.[2] As far as we are guided by historical testimony, two great men, the pillars of our Church and State, may be considered as entitled, beyond the rest, to the glory of this monument—Stephen Langton, archbishop of Canterbury, and William, earl of Pembroke. To their temperate zeal for a legal government England was indebted, during that critical period, for the two greatest blessings that patriotic statesmen could confer—the establishment of civil liberty upon an immovable basis, and the preservation of national independence under the ancient line of sovereigns, which rasher men were about to exchange for the dominion of France.

By the Magna Charta of King John, regulations extending to the sub-vassals of the Crown redressed the worst grievances of every military tenant in England; the franchises of the city of London and of all towns and boroughs were declared inviolable; the freedom of commerce was guaranteed to alien merchants; the Court of Common Pleas, instead of following the king's person, was fixed at Westminster. But the essential clauses of Magna Charta are those which protect the personal liberty and property of all freemen by giving security from arbitrary imprisonment and arbitrary spoliation. From the era of King John's charter it must have been a clear principle of our constitution that no man can be detained in prison without trial.[3]

By several clauses of the charter the right to exact aids and scutages was limited to the three legal cases: the king's personal captivity, the knighthood of the king's eldest son, and the marriage of the king's eldest daughter. To levy an

[1] Hallam's *Middle Ages*, vol. ii. chap. viii. part ii. p. 326.
[2] Hume's *History of England*, chap ii. (A.D. 1215) p. 115.
[3] Hallam's *Middle Ages*, vol. ii. chap. viii. part ii. pp. 327, 328.

aid or scutage on any other occasion involved so important a departure from feudal principles that a special provision was made for such an event.[1] The 14th clause of King John's charter provides that no aid or scutage shall be imposed either on land or towns, except in the three feudal cases, but by consent of the Great Council; and, for more security, it enumerates the persons entitled to a seat in that assembly, the prelates, and immediate tenants of the Crown, without any mention of the Commons; an authority so full, certain, and explicit that nothing but the zeal of party could ever have procured credit for any contrary hypothesis.[2] To go more minutely into the clause—after providing that the prelates and greater barons shall be summoned individually for the granting of pecuniary aids, it is ordained that the king shall, by his sheriffs, summon generally all [others] who hold of the king in chief.

To the Upper House of our modern parliament this clause is still perfectly applicable. From the Lower House the common council of John's charter essentially differs in excluding representation, and confining the right of concurrence in imposing taxes to the prelates and direct tenants of the Crown.[3]

Other clauses restrain the excessive amercements, which had a ruinous operation. And in every case the 'contenement' (a word expressive of chattels necessary to each man's station, as the arms of a gentleman, the merchandise of a trader, the plough and waggons of a peasant) was exempted from seizure.[4]

Dean Hook, in his 'Lives of the Archbishops of Canterbury,'[5] has pointed out that Pope Innocent III. denounced the barons for obtaining Magna Charta, and denounced Magna Charta itself, because King John, departing from the policy of his predecessors, had acknowledged himself to be the pope's

[1] *The History of England*, by John Lingard, D.D., ii. 252.
[2] Hume's *History of England*, appendix ii. p. 797.
[3] See the *History of England*, by the Right Hon. Sir James Mackintosh, vol. i. chap. iii. p. 219.
[4] See Hallam's *Middle Ages*, vol. ii. chap. viii. part ii. pp. 328.
[5] Vol. ii. 710–726.

vassal, and had done homage to the pope, as his liege lord, for his dominions :—

'We altogether quash the Charter,' said Pope Innocent, 'and pronounce it to be, with all its obligations and guarantees, null and void!'

So ran the Papal Bull of August 25, 1215. But the charter declared in its very first paragraph, inspired by the patriot-Archbishop of Canterbury, that 'the Church of England shall be free, and shall have her whole rights and liberties inviolate;' and Church and State in England united in disregarding the thunder of the apostolic see.

The Roman Catholic historian Dr. Lingard writes :—

'The pontiff finding that his exhortations and his promises were equally fruitless, ordered Langton to excommunicate the disobedient; but that prelate refused; in punishment he was suspended from the exercise of archiepiscopal functions. Sentence of excommunication was then fulminated, in which the chiefs and confederates were mentioned by name, and the City of London was placed under an interdict. Both censures were equally despised.'[1]

From this era a new soul was infused into the people of England. Her liberties, at the best long in abeyance, became a tangible possession, and those indefinite aspirations for the laws of Edward the Confessor were changed into a steady regard for the Great Charter. Pass but from the history of Roger de Hoveden to that of Matthew Paris, from the second Henry to the third, and judge whether the victorious struggle had not excited an energy of public spirit, to which the nation was before a stranger.

'The strong man,' in the sublime language of Milton, 'was aroused from sleep, and shook his invincible locks.'[2]

It is observable that the language of the Great Charter is simple, brief, and general, without being abstract, and expressed in terms of authority, not of argument, yet, on the whole, so reasonable as to carry with it the intrinsic evidence of its own

[1] *History of England*, by John Lingard, D.D., vol. ii. chap. xiv. p. 263.
[2] Hallam's *Middle Ages*, vol. ii. chap. viii. part ii. p. 329.

fitness. It was understood by the simplest of the unlettered age, for whom it was intended. For almost five centuries it was appealed to as the decisive authority on behalf of the people, though commonly, so far only as the necessities of the case demanded.

To all mankind it set the first example of the progress of a great people for centuries, in blending their tumultuary *democracy* and haughty *nobility* with a fluctuating and vaguely limited *monarchy*, so as at length to evolve from these discordant materials the only form of free government which experience has shown to be reconcilable with widely extended dominions. Whoever, in any future age, or unborn nation, may admire the felicity of the expedient which converted the power of taxation into the shield of liberty, by which discretionary and secret imprisonment was rendered impracticable and portions of the people were trained to exercise a larger share of judicial power than was ever allotted to them in any other civilised state in such a manner as to secure, instead of endangering, tranquillity—whoever exults at the spectacle of enlightened and independent assemblies, who, under the eye of a well-informed nation, discuss and determine the laws and policy likely to make communities great and happy—whoever is capable of comprehending all the effects of such institutions, with all their possible improvements, upon the mind and genius of a people, is sacredly bound to speak with reverential gratitude of the authors of the Great Charter.[1]

In a delightful speech delivered at the Eighty Club, at Cambridge,[2] Mr. Lockwood[3] said: 'The Master of Corpus praised the House of Lords because of the conduct of the Barons at Runnymede in 1215, and the House never met till 1258.'

The date selected by Mr. Lockwood is unfortunate; it is the date of 'the Mad Parliament!' The House of Commons

[1] *History of England*, by the Right Hon. Sir James Mackintosh, vol. i. chap. iii. pp. 221, 222.

[2] On June 2, 1894. *Daily News*, June 4, 1894.

[3] Now Sir Frank Lockwood, Solicitor-General.

was not then in existence, so that, strictly speaking, the word 'House' is inapplicable then, exactly as in 1215.

'Parliament' meant the prelates and nobles of the king's Great Council in 1258, as in 1215. Mr. Lockwood was merely playing upon the word 'House.' Strictly speaking, there could not be 'a House of Lords' till there was 'a House of Commons;' but I have used the expression 'House of Lords' for both the Witenagemot and the king's Great Council, in preference to the term 'parliament,' which is misleading, as it is difficult to disabuse the mind of the idea that the House of Commons formed part of it. I prefer to use an expression which conveys the incontrovertible fact that an assembly consisting of prelates and nobles existed in both Anglo-Saxon and Anglo-Norman times, without whose assent no law could be passed.[1]

(2) Edward I

The Confirmatio Chartarum

King Henry III. was obliged on several occasions[2] to confirm Magna Charta; but next in importance to Magna Charta itself comes the Confirmatio Chartarum, which was, very reluctantly, conceded by King Edward I., in the twenty-fifth year of his reign. To whom was it due? A parliament had been held in London when the barons insisted on these concessions.[3]

I do not know that England has ever produced patriots to whose memory she owes more gratitude than Humphrey Bohun, earl of Hereford and Essex, and Roger Bigod, earl of Norfolk. In the Great Charter the base spirit and deserted condition of John take off something from the glory of the triumph, though they enhance the moderation of those who pressed no further upon an abject tyrant. But to with-

[1] The parliament of 1258 was called 'the Mad Parliament' because of the ruthless conduct of the Earl of Leicester (who was in the ascendent then, as in 1265) towards his liege lord, King Henry III.

[2] The *Student's Hume* (Henry III.), p. 148.

[3] The circumstances are not wholly unlike those of Magna Charta. See Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 4, n. (d).

stand the measures of Edward, a prince unequalled by any who had reigned in England since the Conqueror for prudence, valour and success, required a far more intrepid patriotism. Their provocations, if less outrageous than those received from John, were such as evidently manifested a disposition in Edward to reign without control. The confirmation of the Charters added another pillar to our constitution not less important than the Great Charter itself. It gave that security to private property which Magna Charta had given to personal liberty;[1] the power of arbitrary taxation, by the mere will of the sovereign, which had been exercised as a part of the royal prerogative, was expressly renounced.

CHAPTER V

EVOLUTION OF THE KNIGHTS OF THE SHIRE FROM THE HOUSE OF LORDS

THE Queen is a lineal descendant of Egbert, the first king of a United England, who flourished more than a thousand years ago. Nay, we can carry back our sovereign's lineage, if necessary, to Cerdic the first king of Wessex, whose triumphal career commenced A. D. 495! Where will you find a dynasty to compare with this? What other nation can show such an ancestry for the chief of the state?

If we start from the commencement of the reign of Egbert, the first king of a United England, and close our review of the past history of our country with the commencement of the reign of Edward I., the monarch in whose time the House of Commons began legally to sit, we find that England had no House of Commons for about 450 years, a period about as long as that which elapsed from the landing of Julius Cæsar to the relinquishment of Britain by the Romans; or, to take a less distant comparison, a period about as long as that which elapsed between the accession of Edward I. and the accession of George II.

[1] Hallam's *Middle Ages*, vol. iii. part iii. pp. 2, 3; and see Walsingham, in Camden's *Scriptores Rerum Anglicarum*, pp. 71-73.

The House of Commons was cradled in the bosom of the House of Lords.

Those who had become possessed of subinfeudations, giving manorial rights, and those who still held the knights' fees granted to their ancestors, were styled lesser barons, 'barones minores.'[1]

Many of these, by reason of their narrow means, and of the cost and difficulty of travelling in those times, soon ceased to attend at the king's council as regularly as the more opulent nobles,[2] or 'barones majores.'

This was fortunate, as the number of the lesser barons, according to Gilbert, was at one time 3,000; their attendance at the great council, consequently, would have been inconvenient, if not impossible.[3]

The summons to the great council, however, was still issued through the sheriff, verbally, to the mass of the tenants-in-chief at the county court. Hearing at the county court the sheriff's summons to attend the great council of the realm, the lesser barons obeyed the summons by electing at the county court two of their number to attend the great council and act for the whole body. Those whom they so elected were termed 'knights of the shire.'

All freeholders of the county came eventually to vote in the election of knights of the shire, and not merely the lesser barons. The extension of the franchise arose from the circumstance of the knights being elected at the county courts at which the freeholders of the shire did suit and service.[4]

By the 7 Henry IV. chap. 15 (1405) it was provided that at the next county to be holden after the delivery of the writ of the parliament, proclamation shall be made in the full county of the day and place of parliament, and all they that be there present, as well suitors duly summoned for the same cause as other, shall attend to the election of the knights

[1] *The Historic Peerage of England*, by Sir Harris Nicolas, G.C.M.G (edited by W. Courthope, Somerset Herald), pp. xviii. xix. xxvii. xxviii.

[2] Creasy's *History of England*, vol. i. chap. xi. pp. 328, 329.

[3] Ruffhead's *Preface to the Statutes at Large* (written in 1762), p. x.

[4] *The Rise and Progress of the British Constitution*, by Sir Edward Creasy, chap. xiii. pp. 192, 193.

(*chivalers*) for the parliament, and then, in the full county, they shall proceed to the election freely and indifferently, notwithstanding any request or command to the contrary.

By the 11 Henry IV. chap. 2 the sheriff was rendered liable to a penalty of 100*l.* for a return contrary to the statute.

Subsequently a statute of King Henry VI. limited the county franchise to such freeholders only as possessed free tenements of the clear annual value of forty shillings.[1] The statute reveals in its recitals the curious fact 'that elections had of late been made by very great, outrageous and excessive number of people, dwelling within the same counties, of which most part were of small substance and no value.'

This inundation of voters was probably due to the large expressions inadvertently used in the statute 7 Henry IV. chap. 15.[2]

The knights of the shire for some time seem to have been considered as a distinct order from the Commons, as may be inferred from 10 Edward III., where it is said:—'The king hath perceived, at the complaint of the prelates, earls, barons, and also at the showing of the knights of the shires, and his Commons.'

Likewise, in the 6 Edward III. (n. 6), the prelates, earls, barons and great men, by themselves, 'et les chevaliers des contés et gents du commune, par euxmesmes.'

The change which took place in the constitution of parliament consummated the degradation, if we must use the word,[3] of the lower nobility. I mean not so much their attendance by representation instead of personal summons, as their election bythe whole body of freeholders, and their eparation from the House of Peers.

[1] *Rise and Progress of the British Constitution*, chap. xiii. p. 193; 8 Henry VI. chap. 7.

[2] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 111 n. (q).

[3] The phrase is Hallam's. See *Middle Ages*, vol. ii. chap. viii. part ii. 351.

CHAPTER VI

ORIGIN OF THE REPRESENTATION OF CITIES AND BOROUGHS

THE first writs for the election of representatives of the cities and boroughs were issued (with those for the election of knights of the shire) on December 12, 1264, in the 49th year of King Henry III. The king was then a prisoner in the hands of his rebellious vassal, Simon de Montfort, earl of Leicester,[1] and, therefore, the whole proceeding was a usurpation on the rights of the Crown, and cannot be drawn into a constitutional precedent.

Edward I. might easily when he came to the throne have discarded the Leicester model of parliament as a revolutionary novelty. He was under no obligation, moral or legal, to revive it. Its re-institution was not demanded or requested of him, by either the nobility or commonalty of the land. The admission of the people to a share in the government was a voluntary concession on the part of Edward, at least during the greater part of his long reign.[2]

A legislative act in one of Edward I.'s great councils was as fully operative as a legislative act in one of his parliaments.[3] But it became the usage of Edward I. to convene those larger bodies when subsidies were required by him.[4]

The first records of writs of summons to parliament of individuals, and of writs for the election of knights, citizens and burgesses, after the 49 Henry III. is in the 23 Edward I., 1295.[5] De Lolme[6] fixes the legal origin of the House of Commons at the year 1295. Chepmell, in his 'Short Course of History,'[7] gives as a chronological mnemonic for students

[1] He was brother-in-law of the king, and was slain (with his eldest son Henry) at the battle of Evesham, on August 4, 1265, six months after the issue of the writs.

[2] *History of England*, by Sir Edward Creasy, vol. i. chap. xiii. p. 466.

[3] *Ibid.* vol. ii. chap. iii. p. 225. Professor Tout's *Edward I.* p. 142.

[4] Creasy's *History of England*, vol. i. chap. xiii. pp. 444, 445.

[5] To the royal writ the House of Commons owe their election, as the representatives of the people. May's *Parl. Practice*, chap. i. p. 6 (10th edition).

[6] *The Constitution of England*, chap. ii. p. 32 n. (d).

[7] P. 164.

'1295: House of Commons.' Hallam[1] speaks of the 23 Edward I. as 'the earliest epoch of acknowledged representation.'[2]

In 1295 Edward assembled parliament so full and complete that it rightly became looked upon as the Model Parliament in succeeding ages; bishops, earls, barons, were there as a matter of course. But there also gathered by their side two knights chosen by the popular court of each shire and two citizens or burgesses from every city or borough summoned, like the county members, by writs sent, in the first instance, to the sheriff of the shire. The result was a complete parliament of the three estates. In the great parliaments in the later years of Edward's reign the precedents set by this famous assembly were carefully followed.

Edward's Parliament of 1295 was a real gathering of the whole nation, not like that of Montfort, in 1265, a mere parliamentary assemblage of partisans of the then dominant faction.

The custom of hereditary peerage was established by Edward's action. The lawyers have always held that the male heirs of those whose ancestors received a summons to his Model Parliament can claim a right to a writ of summons.[2]

The elective franchise was deemed by the boroughs no privilege, but rather an intolerable grievance. Where they could not persuade the sheriff to omit sending his writ to them, they set it at defiance, by sending no return, and thus seldom failed to succeed, so that, after one or two refusals to comply, which brought no punishment upon them, they were left in quiet enjoyment of their insignificance. It was the continual practice of sheriffs to omit boroughs that had been in the recent habit of electing members, and to return, upon the writ, that there were 'no more within their county.' The wages of burgesses were two shillings a day; but even this pittance was raised with reluctance and difficulty from miserable burghers, little solicitous about political franchises.

[1] *Middle Ages*, vol. iii. chap. viii. part iii. p. 117.

[2] Professor Tout's *Edward I.* chap. viii. ('Edward and the Three Estates') pp. 144–146 (1893).

Poverty, indeed, seems to have been accepted as a legal excuse. The sheriffs constantly returned that 'no boroughs within their county ought to be called upon on account of their poverty.' This return was frequently made from 36 Edward III. to the reign of Henry VI.[1]

Some towns actually obtained charters of exemption from sending burgesses, or a dispensation from sending them for a certain period. Sometimes an elected burgess absolutely refused to go to parliament and drove his constituents to a fresh choice.

It appears to have been the common practice for a very few of the principal members of the corporations to make the election in the county court.[2]

CHAPTER VII

KNIGHTS OF THE SHIRE COALESCE WITH CITY AND BOROUGH REPRESENTATIVES

I THINK it may be inferred from the rolls of parliament that the Houses were divided, as they are at present, in the eighth, ninth, and nineteenth years of Edward II.[3] This, however, appears beyond doubt in the first of Edward III.[4]

The nature of the division which took place has been most momentous for the liberties of England. If the representatives of the inferior military tenants-in-chief had been admitted to the chamber of the great barons, or if they had sat apart from the burgesses, the same violent distinctions of class and caste must have grown up in England that have been so pernicious in the continental kingdoms. But, providentially for England, the knights of the shire coalesced in parliament with the borough representatives, and although some time elapsed before any system was maintained, they became the joint representatives of the commons of England,

[1] 4 Prynne, p. 317; Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 114, 115.

[2] 3 Prynne, pp. 252, 277. [3] *Rot. Parl.* vol. i. 289, 351, 430.

[4] *Ibid.* vol. ii. 5, 7. See Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 38.

leaving the great barons to form together with the prelates a separate senate and a separate order. The benefits of this to England have been incalculable. She has had the advantage of a nobility, and has not been cursed with a *noblesse*. One of the proud deficiencies of our language is that the term '*roturier*' is untranslatable into English.[1]

In the reigns of Edward III. and his three successors, about ninety cities and towns, on an average, returned members; so that we may reckon this part of the Commons at one hundred and eighty.[2] These, if regular in their duties, might appear an overbalance for the seventy-four knights who sat with them. But the dignity of ancient lineage, territorial wealth, and military character in times when the feudal spirit was hardly extinct, and that of chivalry at its height, made these burghers vail their heads to the landed aristocracy. It is pretty manifest that the knights, though doubtless with some support from the representatives of towns, sustained the chief brunt of battle against the Crown.[3]

In the reign of Edward IV., and not before, a very few of the burgesses bear the addition of 'esquire' in the returns.[4]

Guizot, the great French writer and statesman, in his 'History of Civilisation,'[5] vindicates, in his powerful way, the success in England of the attempt at junction and alliance between the various elements of society, with a view to form of them a single political body, a regular state, while it failed everywhere on the Continent.

(1) 'The great lords were obliged to coalesce in order to resist in common. Thus have prevailed, in the high aristocracy, the principles of association and true political manners.'[6]

(2) 'The petty fief-holders have been gradually led to unite

[1] *Rise and Progress of the British Constitution*, by Sir Edward Creasy, chap. xiii. pp. 199, 200.

[2] Willis, *Notitia Parliamentaria*, iii. 96.

[3] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 117, 118.

[4] *Ibid.* p. 119. Prynne's *Fourth Register*, p. 1184.

[5] Vol. i. 10th lecture, pp. 192, 193 (Hazlitt's translation).

[6] 'The dignity and authority of the English peer was one which he could hold and exercise only in partnership with his fellows. The very essence of the peerage is the summons to take part in the proceedings of an assembly.'—*Encyclopædia Britannica*, xviii. 461 (Title 'Peerage').

themselves with the burghers, to sit with them in the House of Commons, which thus possessed a power superior to that of the continental assemblies.'

That portion of our liberties which we owe to the House of Commons was not, like Magna Charta, won at the point of the sword, but by a much more prosaic weapon, the power of the purse, which is still its main leverage. These liberties were purchased in hard cash—very hard cash sometimes. It was fortunate for Englishmen that the greater part of France belonged to England. Our Plantagenet monarchs wanted money to enable them to carry on their French wars, and they found they could get it better by summoning the representatives of the people to vote supplies than by taking the money from their subjects by virtue of a supposed royal prerogative. When the monarch asked for money the representatives of the people said, 'Yes; but on condition that you remedy the grievances of those whom we represent.' 'Grievances first and Supply afterwards' is a principle embedded in the procedure of the Lower House. In my time[1] the members of the House of Commons used to be able to talk upon everything under the sun when committee of supply was moved, and often the ministers had to go to bed without getting a penny! I believe some restrictions have since been put on the abuse of this privilege, but it represented the historical growth of our liberties.

It is not unimportant to note that when taxation by royal prerogative ceased the Commons did not immediately acquire the right of taxing the other two estates of the realm. 'The bishops,' says Lord Farnborough,[2] 'granted one subsidy, the lords temporal another, and the Commons, again, a separate subsidy for themselves,' *i.e.* for the laity. 'The clergy, as a body, granted subsidies, either as a national council of the clergy in connection with the parliament, or, at a later period, in convocation.' 'At length, when the Commons had increased in political influence, and the subsidies voted by them had become the principal source of national revenue, they gradually

[1] 1868 to 1880.

[2] May's *Parliamentary Practice*, 10th edit. chap. i. p. 20.

assumed their present position in regard to taxation and supply, and included the Lords as well as themselves in their grants.'[1] As far back as 1407[2] grants were granted by the Commons and assented to by the Lords.

The Crown in the first instance makes known to the Commons the pecuniary necessities of the government, and the Commons grant such 'aids,' or supplies, as are required to satisfy these demands; and provide, by taxes, the ways and means to meet the supplies which are granted by them. Thus the Crown demands money, the Commons grant it, and the Lords assent to the grant.

The foundation of all parliamentary taxation is its necessity for the public service, as declared by the Crown, through its constitutional advisers. The Commons do not vote money, unless it be required by the Crown.[3]

From the first dawn of the representation of the people in this country 'supply' has stood upon a totally distinct footing from the making of *new laws*.

CHAPTER VIII

EDWARD I. TO HENRY VI.—THE COMMONS PETITIONERS, THE KING AND THE LORDS LEGISLATORS

THE House of Lords, in bridging over (as the most permanent element in the constitution) the chasms in constitutional history caused by the breaks in the continuity of the monarchy, has formed the principal connecting link between the past, the present and the future. A number of illustrations occur during the period which we are now considering.

Edward I., being in Sicily at his father's death, the nobility met in the Temple Church, and, after making a new great seal, appointed the Archbishop of York, Edward Earl of

[1] May's *Parliamentary Practice* (10th ed.) chap. xxii. pp. 553, 554.

[2] In King Henry IV.'s reign.

[3] May's *Parliamentary Practice* (10th edit.) chap. xxii. pp. 515, 532. The system of 'tacking' to 'Bills of Supply' measures which had no relation to finance, was an 'invasion of the privileges of the Lords.' *Ibid.* p. 552,

Cornwall, and the Earl of Gloucester to be ministers and guardians of the realm, who accordingly conducted the administration in the king's name until his return.[1]

During the minority of King Richard II. the House of Commons, although they had just chosen their first Speaker, Peter le Mare, 'were,' says Hume,[2] 'still too sensible of their great inferiority to assume, at first, any immediate share in the administration of government, or the care of the king's person. They were content to apply by petition to the Lords for that purpose, and desire them to appoint a council of nine, who might direct the public business. The Lords complied with this request, and elected the Bishops of London, Carlisle and Salisbury, the Earls of March and Stafford, Sir Richard de Stafford, Sir Henry le Scrope, Sir John Devereux, and Sir Hugh Segrave, to whom they gave authority for a year to conduct the ordinary course of business.'[3] The Lords alone assumed the power of appointing the great officers of state during the king's minority, the Commons tacitly acquiesced in their choice.

Henry VI. was but nine months old at his father's death. Upon the news arriving that Henry V. was dead, several lords spiritual and temporal assembled on account of the imminent necessity, in order to preserve peace and provide for the exercise of offices appertaining to the king. These peers accordingly issued commissions to judges, sheriffs, escheators, and others for various purposes, and writs for a new parliament. This was opened by commission, under the great seal, directed to the Duke of Gloucester, in the usual form, and with the king's *teste*.[4]

It may be laid down as a general rule, during this period, that whenever the reigning monarch, either through extreme youth or mental disease, was incapable of performing the functions of royalty, the exercise of his authority devolved

[1] Matthew of Westminster, ap. Brady's *History of England*, ii. 1, Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 184, 185.

[2] *History of England*, chap. xvii. p. 196 (A.D. 1377); 1 *Parl. Hist.* 339, 349; 2 *Hatsell*, 212.

[3] Rymer, vii. 161.

[4] *Rot. Parl.* vol. iv. 169; Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 186.

exclusively on the House of Peers, who appointed the great officers of state, and the members of the council, giving to them powers to transact the ordinary business of government, but resuming those powers as often as they themselves were assembled, either in parliament or in a great council. The recognition of these doctrines was, in the reign of Henry VI., required from the first princes of the blood, the Dukes of Bedford, Gloucester and York, who at different times acknowledged that, during the king's minority or incapacity, they were entitled to no more authority than any other peer, unless it were conferred upon them by the whole body.

For the same reason, when the succession to the Crown was disputed, the claims of each party were brought before the House of Lords, as the only legitimate tribunal which possessed the authority to pronounce on so important a question. The Commons neither presumed nor would have been suffered to interfere.

The nomination of the protector and the councillors was made, and their powers were determined by the peers alone.[1]

In the reign of Henry IV. controverted elections of members of the House of Commons were decided by the House of Lords.[2]

Edward III. conferred the title of duke upon his eldest son, Edward the Black Prince, in 1337, and next upon Henry Plantagenet, earl of Lancaster, in 1351, both of whom were created in Parliament. Lionel Plantagenet, the king's third son, was created duke of Clarence in full parliament on November 13, 1362, and John, his brother, was at the same time made duke of Lancaster.

Our dukes occupy a position immediately above marquesses, at the head of the peerage.

By charter, on December 1, 1385, King Richard II. bestowed the title of 'marquess'[3] on Robert de Vere, earl of

[1] *History of England*, by John Lingard, D.D., book iii. chap. xxiii. p. 496. ('Powers of the House of Lords.')

[2] See *Rot. Parl.* 5 Henry IV. No. 38, vol. iii. 530, A.D. 1403–4; *Constitutional History of the House of Lords*, chap. xiii. p. 284.

[3] The word 'Marchio' originally meant 'a Lord Marcher,' or 'Lord of a frontier district;' the title *Earl of March* is derived from the same source.

Oxford, creating him marquess of Dublin for life, in full parliament, there being present there the prelates, nobles and magnates, and the whole of the Commons; the king ratified and confirmed the charter for himself and his heirs, and invested the marquess with the title by the girding of the sword, and setting upon his head the coronet of gold, and delivering the charter to the marquess with his own hand.

It was not, however, till the reign of Edward IV. that the title of marquess became a common title of peerage in this country. Excepting in the case of the first marquess the title has never been bestowed for life.[1]

Marquesses rank immediately below dukes and above earls.

The title of 'earl,' which in Anglo-Saxon times[2] meant, as we have seen, 'a man of noble birth,' and then 'the governor of a province,' and in Anglo-Norman times[3] a superior kind of 'baron,' paying a higher relief than an ordinary baron, was assigned, during the period which we are now considering, a position next after that of marquess, and immediately before that of viscount.

The sixth Baron Beaumont was created 'Viscount' Beaumont by King Henry VI. on February 12, 1440 (18 Henry VI.), being the first person honoured with the title of 'viscount' in England. The viscounty was granted, by patent, to him and the heirs male of his body. King Henry VI.[4] bestowed upon him, within a year, the viscounty of Beaumont in France, which had escheated to the Crown.

Viscount Beaumont was to have a place in parliament above all the barons in England, and immediately after earls, a position which viscounts have ever since retained.[5]

There were three ways of creating barons by tenure, by

[1] *The Historic Peerage of England*, by Sir Harris Nicolas, G.C.M.G. (edited by Courthope), pp. lviii.–lxii. Robert de Vere surrendered his patent of creation as marquess, and in 1386 was created duke of Ireland for life. These successive creations, however, did not make him a life peer. They were simply additions during his life to the earldom of Oxford. See the *Constitutional History of the House of Lords*, chap. xv. pp. 369, 370.

[2] Chap. ii. *supra*. [3] Chap. iii. *supra*.

[4] He had been crowned king of France.

[5] 'Viscount' originally meant 'deputy earl' or 'sheriff' (*Vicecomes*)

writ and by patent.[1] Barons by tenure held, as we have seen,[2] of the king *in capite*; barons by writ sat, as we have also seen,[3] by virtue of the king's summons to parliament in the exercise of his royal prerogative; barons by patent also sat by virtue of the royal prerogative, the form of creating them, however, being by letters patent—the method of creation now generally adopted.

'The first instance,' says Sir Harris Nicolas,[4] 'of a barony having been created by letters patent occurred in the reign of King Richard II., who created John de Beauchamp of Holt baron of Kidderminster by letters patent, dated October 10, 1387, to him, and the heirs male of his body.

'The principle of the creation of a baron by patent, thus introduced in the reign of King Richard II., did not make much progress till the reign of Henry VI., and forty-six years intervened between the creation of John de Beauchamp of Holt, and that of Sir John Cornwall to be baron of Fanhope, 11 Hen. VI. (1433), but from the 21st year of King Henry VI. the practice became general.'

The rank of barons certainly arose at first from their tenure of their baronial estates, and in England, as in Normandy, we find these estates, from the Conquest, descending to the heir, without doubt or question, subject to the payment of the usual relief to the king. In the course of time the summons of a baron to parliament became, by a natural transition, also hereditary, and no longer depending on the caprice of the sovereign. The incident of descent by heirship was looked on as a necessary quality of peerage, without any formal enunciation of the principle in charter or in statute.[5]

The period now under consideration was diligently searched, for precedents of life peerages, by the supporters of the letters patent issued in 1856 to Sir James Parke, an emi-

[1] See Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 123-131.
[2] Chap. iii. *supra*. [3] *Ibid.*
[4] *Historic Peerage of England*, by Sir Harris Nicolas (edited by W. Courthope, Somerset Herald), pp. xlii.-xlvi.
[5] See Creasy's *History of England*, vol. i. chap. xii. p. 451; Pike's *Constitutional History of the House of Lords*, chap. vi. pp. 88, 100.

nent baron of the court of exchequer, creating him Baron Wensleydale for life, nor was the search in vain.

Some of these life peerages, however, had been made in full parliament[1] (*in pleno parliamento*), and must be taken to have proceeded from the whole legislature; some had been granted to peers already entitled to sit in parliament by hereditary right; some never sat in the House of Peers; and one had been a foreigner, and so could not claim a seat.[2]

There is a tendency nowadays for members of the House of Commons to interfere with the royal prerogative of declaring war or maintaining peace; so that it is not a little interesting to refer to the language of the House of Commons to King Edward III. in the 21st year of his reign, when he consulted them as to his war with France:—

'Most dreaded Lord, we are so ignorant and simple [*nous fumes si mesconnisantz et simples*] that we know not how, nor have the power to give counsel [*que nous ne savons ne poons ent conseiller*]; wherefore we pray your Grace to excuse us in this matter, and that it might please you, with the advice of the great and wise ones of your council, to ordain what seems best to you for the honour and profit of yourself and your kingdom; and whatever shall be thus ordained by assent and agreement of you and your great ones we readily assent to, and will hold it firmly established.'[3]

Of the *Confirmatio Chartarum*, 'which is properly denominated a statute, and always printed as such,' Hallam says that 'it added another pillar to our constitution, not less important than the Great Charter itself,' but 'in form like Magna Charta, it is a charter or letters patent proceeding from the Crown, without even reciting the consent of the Realm.'[4]

In most of the ancient statutes the Commons are not so much as named, and in several, even where they are mentioned,

[1] Thus under Richard II. the Duke of York's son was created earl of Rutland, to hold *during his father's life*, with the consent of the Lords and Commons entered upon the Roll of Parliament. *Rot. Parl.* iii. 263–4.

[2] See on this subject May's *Constitutional History of England*, vol. i. chap. v. p. 242.

[3] *Rot. Parl.*, 21 Edw. III. vol. ii. p. 165.

[4] *Middle Ages*, vol. iii. chap. viii. part iii. pp. 3 and 4 n. (d).

they are distinguished as petitioners merely: the assent of the Lords being expressed in contradistinction to the request of the Commons.[1]

The Commons took occasion when convened by the king to present petitions for the redress of grievances, from which most of our early statutes are framed. The petition, with the king's answer, was entered on the parliament rolls, and from them, by the advice of the judges and others of the king's council, the act was framed, and for the most part entered on a roll called the statute roll. Many acts, however, though undoubtedly valid, were not entered on the statute roll; for if the petition[2] did not demand '*novel ley*'—that is, if the provision required would stand with the laws in force, and did not tend to change or alter any statute then in being—the law was complete by the royal assent on the parliament roll, without any entry on the statute roll; and such petitions after the royal assent were termed 'ordinances,' being such as might at any time be amended by the parliament, without any statute, whereas one statute could not be altered but by another; and this distinction is clearly expressed in the rolls.[3]

Ruffhead shows that, so far from the statute, or ordinance as finally framed, expressing the views of the Commons, it sometimes expressed the very reverse. He gives as an illustration the 2 Hen. IV. cap. 15, which was passed, although the Commons disavowed it.

The assent of the House of Lords was clearly necessary, during this period, to turn a petition of the Commons into an act of parliament, to make it part and parcel of the statute law of the realm.

About the end of the reign of Henry VI. or the beginning of that of Edward IV.,[4] the practice was introduced of reducing the petitions, even in the first instance, into the full and complete form of bills.[5]

[1] Ruffhead's *Preface to the Statutes at Large*, p. xii.

[2] Ruffhead says 'bills,' but there were no bills then.

[3] *Rot. Parl.*, 37 Edw. III., No. 39, vol. ii. p. 280; Ruffhead, pp. xii. xiii.

[4] 1461.

[5] Ruffhead's *Preface to the Statutes at Large*, p. xv. Ruffhead says 'form of acts of parliament;' but plainly the petitions could not be reduced, in the first instance, into 'acts of parliament.'

The House of Commons, which hitherto had only existed for the purpose of granting supplies to the Crown, and obtaining redress of the subject's grievances, became, in 1461, when the practice of introducing bills instead of presenting petitions began, an integral part of the legislature of this country.

The House of Commons, although it has been in existance for 600 years, only commenced its career as a legislative assembly 480 years ago.[1]

CHAPTER IX

THE WARS OF THE ROSES

THE houses of York and Lancaster disputed for the throne. When they came to the end of their sanguinary contest, the high English aristocracy found itself ruined, decimated, and incapable of preserving the power which it had hitherto exercised. The coalition of the great barons could no longer influence the throne.[2]

A better illustration could not be afforded of the principle which I venture unhesitatingly to lay down, that the only epochs in English history when the liberties of the people were disregarded were epochs when the nobility of England was prostrate in the dust.

The reign of Edward IV. is the first during which no statute was passed for the redress of grievances, or maintenance of the subject's liberty. Nor is there a single petition of this nature upon the rolls of parliament.[3]

The latter part of the reign of Henry VI. and the reigns of Edward IV., Edward V. and Richard III. throw a lurid light on the state of chaos to which a nation is reduced when the question who is to be the chief of the state has not been

[1] It is satisfactory to know that, in the opinion of a severe critic of the House of Lords, Mr. Spalding (*The House of Lords an Anomaly and a Danger*, p. 8), 'that House was,' down to this time, 'a vital and predominating factor in the constitution, resisting the encroachments of the Crown in the interests of the community.'

[2] Guizot's *History of Civilisation*, i. 202 (Eleventh Lecture).

[3] See Hallam's *Middle Ages*, vol. iii. chap. vii. part iii. p. 198.

settled by the establishment of fixed rules of succession. Their reigns were reigns of terror. A system of extermination of their adversaries was pursued by each side when it obtained the mastery. The Lancastrians attainted the Yorkists, and the Yorkists reversed the attainders, and attainted the Lancastrians. The foremost men in the land perished on the scaffold; the alternate proscriptions of Henry VI. and Edward IV. were so intolerable that they led to the enactment of the celebrated statute [1] doing away with the distinction between governments *de jure* and *de facto*.

CHAPTER X

THE HOUSE OF TUDOR

THE new feature under the Tudors was that royalty assumed a primitive and independent sovereignty; it adopted a style hitherto unknown. The theoretical pretensions of Henry VIII. and of Elizabeth are entirely different from those of Edward I. or Edward III.[2] In a word, *Lex est Rex* gave place to *Rex est Lex*.

The havoc which the multiplied attainders during the rivalry of the Two Roses had wrought amongst the nobility may be gathered from the fact that 'no more than twenty-nine temporal peers received writs of summons to the first parliament of Henry VII.'[3]

The temporal peers, 'a small body,' were at the mercy of the monarch. A single suspicion in the dark bosom of Henry VII., a single cloud of wayward humour in his son, would be sufficient to send the proudest peer of England to the dungeon and to the scaffold.[4]

As for the House of Commons, 'I have only met with one instance,' says the historian Hallam,[5] 'where the Commons

[1] 11 Henry VII., chap. 1.
[2] Guizot's *History of Civilisation*, i. 231 (Thirteenth Lecture).
[3] May's *Constitutional History of England*, vol. i. chap. v. p. 229.
[4] Hallam's *Constitutional History of England*, vol. i. chap. i. p. 56.
[5] *Ibid.* p. 44.

refused to pass a bill recommended by the Crown in the reign of Henry VIII.'

By the statute 28 Hen. VIII. cap. 17,[1] a king of England, after he shall have attained the age of twenty-four years, may repeal any enactments made since his accession.

England under Henry VIII. interfered in continental politics with more regularity and permanence, and to a greater extent, than she had hitherto done.[2]

Protests of individual peers against the action of the majority, for the time being, of the House of Lords had occasionally[3] been entered on the rolls of parliament, but the practice fell into desuetude. In the reign of King Henry VIII., when the Journals of the House of Lords commenced, the practice was revived, only the protests were entered, instead, upon these Journals.

Henry VIII. 'enjoyed the pleasure,' says Lord Macaulay,[4] 'of persecuting Roman Catholics and Protestants at once; and sent to death on the same hurdle the heretic who denied the real presence and the traitor who denied the royal supremacy.'

It is often assumed that King Henry VIII. was the author of the English Reformation, although the Pope dubbed him 'Defender of the Faith.' But this is an entire mistake. All that he did—(and that with the assent of parliament)—was to emphasise the protest against the interference of the Pope in temporal (and even in spiritual) things, with which our statute-book literally teems from the time that parliaments were first established. The feud, indeed, antedates parliament in the sense in which we now understand the word. The battle between the royal supremacy and the supremacy of the Pope is as old, at least, as the reign of Henry II., the first Plantagenet king. The historian Hume points out that by the Constitutions of Clarendon—voted without opposition by the assembly which answers to our present House of Lords,

[1] Repealed 1 Edw. IV. cap. 11.

[2] Guizot's *History of Civilisation*, i. 215, 216 (Twelfth Lecture).

[3] See an instance, *Rot. Parl.*, 15 Edw. III. No. 42 (vol. ii. p. 131), cited by Mr. Pike, *Constitutional History of the House of Lords*, chap. xii. pp. 245, 246.

[4] *Critical and Historical Essays*, i. 226.

it was enacted that 'the archbishops, bishops, and other spiritual dignitaries should be regarded as barons of the realm, and should be bound to attend the king in his great councils,' and that 'all appeals in spiritual causes should be carried from the archdeacon to the bishop, from the bishop to the primate, and from him to the king, and should be carried no further without the king's consent.'[1]

The date of this enactment was January 15, 1164.

Dr. Lingard[2] states that the 'Constitutions' were 'subscribed' by the king, the prelates (including the two primates), and thirty-seven barons. They are a standing witness against appeals to Rome without the king's consent, 370 years before the final abolition of such appeals.[3]

An annual payment of 1,000 marks, known as the 'census,' had been established by King John as an acknowledgment of the dependence of the kingdom on the Pope.

Edward III. with his prelates and nobles decreed that 'neither John nor any other person could subject the nation to another power without the consent of the nation.'[4] The 'census' ceased in consequence of this decree.[5]

The popes claimed 'Peter's Pence.' This tax (with the exception of the reign of Edward III.) was paid regularly for 700 years. In addition to this the popes claimed a further tax named 'Annates,' the firstfruits of vacant bishoprics and benefices.

The 'bulls' for the consecration of bishops were only issued by the Pope, and had to be paid for. Besides this the newly-made bishop had to pay in advance the whole of the first year's income to the Roman court. Amongst the lower clergy every promotion involved the payment of 'Annates.'

By means of 'provisions' (as they were called) the Pope 'provided' beforehand a person to fill the next vacancy in

[1] *History of England*, chap. viii. p. 79; FitzStephen, p. 33; M. Paris, pp. 70, 71; Spelman's *Conc.* ii. 63; Wilkins, p. 321; Gervase, pp. 1386, 1387; *Hist. Quad.* p. 163.

[2] *History of England*, vol. ii. chap. v. p. 308.

[3] In 1534. *Student's Hume*, chap. xv. pp. 270, 271.

[4] *Rot. Parl.* 40 Edw. III. No. 8, vol. ii. p. 290.

[5] *The Catholic Religion*, by the Rev. Vernon Staley, chap. iii. p. 79.

any benefice he named. The most prominent positions and the best livings in the Church were thus filled by foreigners, many of whom resided abroad and never even visited their parishes, knowing neither the speech nor the face of their flocks, all the time drawing the revenues of such benefices.[1]

In the year 1240 Pope Gregory IX. required the archbishop of Canterbury and the bishops of Lincoln and Salisbury to provide for 300 Romans in the earliest vacant benefices which they had at their disposal, restraining them from presenting any others until these, his nominees, had first been provided for.[2]

In the reign of Henry III. the foreign clergy drew 60,000 marks in one year—a sum larger than the revenues of the Crown.[3]

Cardinal Wolsey, living always at court as chancellor and prime minister, held, at the same time, the archbishopric of York and the three bishoprics of Tournai, in Belgium, Lincoln, and Winchester.[4]

Popular preachers, Wycliffe being the chief, had been stirring the people against the many abuses of the times; and the only weapon with which they were encountered was the writ *de heretico comburendo*, invented in the reign of King Henry IV., by which any stubborn heretic was to be handed over by the Church to the civil magistrate to be burnt alive before the people.[5]

To all these preparations for a religious revolution must be added the spread of learning so greatly aided by the invention of printing in the year 1440. The Holy Scriptures were circulated in 'a language understanded of the people.'

The sale of indulgences by the Dominican friar, Tetzel, very chiefly, however, set Europe in a blaze and brought

[1] *The Catholic Religion*, by the Rev. Vernon Staley, chap. iii. p. 80. 'The Causes of the Reformation.'

[2] *Mediæval Church History*, by Archbishop Trench, 2nd edit. pp. 342, 343.

[3] *The Catholic Religion*, by the Rev. Vernon Staley, chap. iii. p. 81

[4] *Ibid.*

[5] *Rot. Parl.* 2 Hen. IV. No. 48, vol. iii. pp. 466, 467; Wilk. *Conc.* iii. 252. 'This reign,' says Dr. Lingard (*History of England*, iv. 441), 'supplies the first instance of a capital execution for the theological crime of heresy.'

about the Reformation on the Continent. Whilst the sale of indulgences was mainly the cause of the Reformation on the Continent, the same cannot be said of the king's divorce. It was rather the occasion than the cause of the Reformation in England. The Reformation, when it came, was only the final act of a long struggle.[1]

'In my opinion,' says Guizot, 'the Reformation was a great movement of the liberty of the human mind, a new necessity for freely thinking and judging, on its own account, and with its own powers, of facts and ideas which hitherto Europe had received, or was held bound to receive, from the hands of authority. It was a grand attempt at the enfranchisement of the human mind; and, to call things by their proper names, an insurrection of the human mind against absolute power in the spiritual order.'[2]

Civil freedom and religious freedom now became indissolubly linked together in the minds of all true patriots in this country. The struggle, which our ancestors maintained, against papal pretensions and royal prerogative in pre-Reformation times had the sanction, as we have seen, of the House of Lords. The struggle to which the Reformation gave birth culminated in the great Revolution of 1688, when the House of Lords took the lead in placing our civil and religious liberties on an immovable basis.

The continuity of the Church of England was happily preserved at the Reformation, but a change took place in the constitution of the first estate of the realm, the lords spiritual. This change was brought about by the dissolution of the monasteries by acts of parliament[3] in the reign of King Henry VIII.

The historian Hallam bestows a just eulogium[4] on the monks of the middle ages for their services to the cause

[1] *The Catholic Religion*, by the Rev. Vernon Staley, chap. iii. pp. 88, 89 and note (1). The author is emphatically a high churchman, which renders his testimony as to pre-Reformation times the more valuable.

[2] *History of Civilisation*, by F. Guizot, i. 220 (Twelfth Lecture).

[3] 27 Hen. VIII. cap. 28; 31 Hen. VIII. cap. 13.

[4] *Middle Ages*, vol. iii. chap. ix. part i. pp. 291, 292, 301, 302.

of charity and of literature. Alms and victuals were given by them to the indigent at the monastery gates. The preservation of manuscripts by them in secure repositories was of inestimable value to after ages. They contrasted favourably with the secular clergy in their greater strictness of discipline.

The statutes of Mortmain were passed in the times of the Edwards, to arrest the vast aggregations of land in their hands; but these statutes were eluded by licences of alienation, and, at the time of the dissolution of the monasteries, one-fifth part of the whole kingdom was in the hands of the monastic orders! They also derived a large revenue from tithes, and, as they could not discharge the duties of the secular clergy, they employed some poor priest to do it for them, who, acting vicariously, was styled a 'vicar.'

'No one fact,' says Hallam,[1] 'can be better supported by current opinion and that general testimony which carries conviction, than the relaxed and vicious state of those foundations for many ages before their fall.' The monks were especially under the protection and patronage of the popes, who freed them from the control of the bishops. This exemption from episcopal control led to great laxity of discipline. By degrees the religious orders came to be objects of dislike to the people of England.[2]

The mitred abbots[3] had been reckoned amongst the prelates entitled to a summons, personally, from the Crown, on the feudal principle that they held their temporalities, like the bishops, by a baronial tenure, immediately of the Crown.[4]

[1] *Constitutional History of England*, vol. i. chap. ii. p. 71, n (y).

[2] *The Catholic Religion*, by the Rev. Vernon Staley, chap. iii. pp. 86–88.

[3] Also some of the priors. King Henry VIII. suppressed 645 monasteries, of which 28 had abbots that enjoyed a seat in parliament. *Student's Hume*, chap. xv. p. 277.

[4] See Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 4. There was this difference originally between the bishops and the heads of religious houses, that the former received writs of summons regularly, while the latter, like the lords temporal, were not summoned unless the king desired their presence. See Pike's *Constitutional History of the House of Lords*, chap. xv. p. 347.

With the monastic foundations over which they presided, the mitred abbots fell. They sat till the end of the first session of Henry VIII.'s sixth parliament, the act extinguishing them not having passed till the last day. In the next session they do not appear.[1]

It was a measure of no inconsiderable hazard and difficulty to annihilate so many prescriptive baronial tenures, the possessors of which composed more than a third part of the House of Lords; but the reports of the visitors, acting under the direction of the Secretary of State, Lord Cromwell, excited so much indignation against the monastic orders that the measure was rendered possible.

There can be no doubt that the dissolution of the monasteries and the fall, in consequence, of the mitred abbots, greatly facilitated the Reformation.

It also strengthened the monarchy and the lay peerage. The monastic property was forfeited to the king; and, as the monks had been peculiarly skilful in appropriating to themselves some of the richest land in England, all these vast domains were placed at the absolute disposal of the Crown. The king was thus enabled to bestow upon those of his subjects who were the most attached to his Crown and person substantial proofs of the royal favour, by grants of the forfeited lands to them and their heirs. The power and prestige of the Crown were thus enhanced.

The participators in the royal bounty held their new estates immediately of the Crown. Many of them were already peers. Many of them became peers, or founded families which afterwards were advanced to the peerage. Thus the connection of the peers with the land, which had been somewhat weakened by the creation of 'barons by writ,' was placed on a more solid foundation.

Five new bishopries were created in the reign of Henry VIII., namely, (1) Oxford, (2) Peterborough, (3) Chester, (4) Gloucester, and (5) Bristol. This increase in the number of

[1] Hallam's *Constitutional History of England*, vol. i. chap. ii. p. 73, n. (b).

bishops raised the number of bishops entitled to be summoned to the Upper House from twenty-one to twenty-six; but this did not counterbalance the diminution in the number of lords spiritual caused by the removal of the heads of religious houses.

King Henry VIII. had intended, before his death, to make a new creation of peers, in order to supply the place of those peerages which had fallen by former attainders, or the failure of issue, and to bestow estates on the new peers. In his will he charged his executors to make good his intentions.

On the accession of King Edward VI., the Earl of Hertford was advanced, on the advice of the executors, to the dignity of duke of Somerset, and the Earl of Essex to that of marquess of Northampton, Viscount Lisle to that of earl of Warwick. Wriothesley was made earl of Southampton, and Sir Thomas Seymour Lord Seymour of Sudeley; Sir Richard Rich, Sir William Willoughby, and Sir Edmond Sheffield accepted the title of barons.[1] Several, to whom the dignity was offered, refused it, because the other part of King Henry VIII.'s promise, the bestowal of estates on these new noblemen, was deferred till a more convenient opportunity.[2]

There were two circumstances which will always endear the memory of King Edward VI. to Englishmen. One was his noble charitable foundations, especially Christ's Hospital; the other the establishment of a form of public prayer, 'understanded of the people'—'our own liturgy, so justly celebrated,' as Hallam says,[3] 'for its piety, elevation, and simplicity.' 'A committee of bishops and divines,' says Hume,[4] 'had been appointed by the council to compose a liturgy, and they had executed the work committed to them. They proceeded with moderation in this delicate undertaking; and they flattered themselves that they had established a service in which every denomination of Christians might, without

[1] Stow's *Annals*, pp. 593, 594; Hume's *History of England*, chap. xxxiv. p. 355.
[2] Hume's *History of England*, chap. xxxiv. p. 355.
[3] *Constitutional History of England*, vol. i. chap. ii. p. 86.
[4] *History of England*, chap. xxxiv. pp. 362, 363.

scruple, concur.' Parliament gave this liturgy the sanction of the State by the first Act of Uniformity.[1]

The mediæval notion that 'the legitimate sphere of government' is 'almost coextensive' with 'the sphere of morals' prevailed at this time. It was derived from classical antiquity. It is the task of governors, according to Plato, to draw from what Homer calls the divine form and likeness subsisting among men, effacing one thing and putting in another, till they have as far as possible made human morals pleasing to the gods.[2]

The weakness of the nobility during the reign of Edward VI. was strikingly exemplified by the ease with which some of the very foremost amongst them were put to death. One of the new peers, the High Admiral, Lord Seymour, was attainted and executed. The Protector, the Duke of Somerset, advanced, as we have seen, from the rank of earl of Hertford, and who signed the death-warrant of Lord Seymour, was himself accused of high treason, and though acquitted of that charge by a jury of his peers, was, for some minor offence, condemned to die, and was executed.

The Earl of Warwick was created duke of Northumberland, and having been mainly instrumental in bringing about the execution of the Duke of Somerset, underwent the same doom, in the early part of the reign of Queen Mary, for proclaiming Lady Jane Grey queen, Edward VI. having been persuaded by him to bequeath the crown to her.

'The tendency of Parliament in those times to obey the royal dictates is, perhaps,' Lord Brougham thinks,[3] 'more clearly seen in the early acts of Mary than even in all their subserviency to her father.' He describes her as 'a person void of capacity, without any experience, unpopular in her address, only armed with the name and prerogative of royalty, only supported by her own fanatical firmness of purpose and by the remains of the sect which had been defeated and crushed in the two previous reigns.'

[1] 2 & 3 Edw. VI. chap. i.

[2] Plato's *Republic*, vi. c. 13. See Lecky's *History of England*, vol. vi. chap. xxiii. p. 231.

[3] Lord Brougham's *British Constitution*, c. xiv. p. 205.

'I doubt,' says Hallam,[1] 'whether we have anything in our history more like conquest than the administration of 1558.' The queen in one month presented to 256 livings, expelling the married clergy and restoring all who had been deprived under the Acts of Uniformity. Many ministers were thrown into gaol for no other crime than their religion, before any change had been made in the established laws. The queen and those around her treated the recent statutes as null and void, and her father's and brother's proceedings as if they had been 'usurpers' and her accession to the throne a 'restoration.'

In the opinion of constitutional writers the violent persecutions of the adherents of the reformed faith led directly to its re-establishment when her short reign was over.[2] The principles which Queen Elizabeth had imbibed were not less despotic than those of her sister; yet of all the sovereigns who, during the Tudor period, exercised a power which was seemingly despotic, but which, in fact, depended for support on the love and confidence of their subjects, she was by far the most popular. Firm and haughty, she yet avoided with care, or retracted with speed, every measure which seemed likely to alienate the great mass of the people. Queen Elizabeth, before the Commons could address her, took out of their mouths the words which they were about to utter in the name of the nation. Her promises went beyond their desires, the performance followed close upon her promise. 'Her memory,' says Lord Macaulay, 'is still held in just veneration by Englishmen.'[3]

Elizabeth resolved, in restoring the reformed faith, to proceed by gradual and secure steps, and not take the law into her own hands like her sister.[4] The Marian bishops were naturally averse to the restoration of the reformed faith, and

[1] *Constitutional History of England*, vol. i. chap. i. pp. 41, 42 and n. (h).

[2] 'There arose a sympathy with men suffering torments with such meekness and patience.' *Ibid.* chap. ii. p. 106.

[3] See Lord Macaulay's *Critical and Historical Essays*, vol. i.; 'Burleigh and his Times,' pp. 233, 234, 235.

[4] Burnet, ii. 378; Camden, p. 371; Hume's *History of England*, chap. xxxviii. p. 392.

opposed it in the House of Lords, but they were outvoted; and the Lords and Commons united with the sovereign in restoring the supremacy of the Crown and placing on the statute-book the Act of Uniformity of 1558.[1]

Mary persecuted her Protestant subjects because she considered them to be heretics, and therefore, that it was her duty to God and to the State to burn them, according to the provisions of the Statute *de heretico comburendo*; Elizabeth persecuted her Roman Catholic subjects because she regarded them as rebels and outlaws, owing allegiance, not to her, but to a foreign potentate, who had excommunicated her and tried to depose her, absolving her subjects from their allegiance.[2]

Queen Elizabeth had the great advantage of being surrounded by able counsellors. Sir William Cecil, Secretary of State,[3] whom she created Lord Burleigh, was, says Hume,[4] 'the most vigilant, active, and prudent minister ever known in England; and as he was governed by no views but the interests of his sovereign, which he had inflexibly pursued, his authority over her became every day more predominant. Ever cool himself, and uninfluenced by prejudice or affection, he checked those sallies of passion, and sometimes of caprice, to which she was subject; and, if he failed of persuading her in the first movement, his perseverance and remonstrances and arguments were sure, at last, to recommend themselves to her sound discernment. The more credit he gained with his mistress, the more was he exposed to the envy of her other counsellors.'[5]

It was largely due to this great statesman that the reformed faith was restored.

Sir Robert Cecil was another of the counsellors of Queen

[1] 1 Eliz. chaps. 1, 2.

[2] Mary's reign only lasted five years—from 1553–1558. Elizabeth's reign lasted forty-five years—from 1558 to 1603; so that she had more opportunities than her sister of carrying out her principles.

[3] He became Lord High Treasurer.

[4] *History of England*, chap. xi. p. 425.

[5] The present Marquess of Exeter is descended from Lord Burleigh. Burke's *Peerage*, 1894, pp. 523, 524.

Elizabeth in whom she reposed the highest confidence. He was the second son of Lord Burleigh. She made him Secretary of State, and subsequently 'Master of the Wards.' [1]

The Marquess of Salisbury is descended from Sir Robert Cecil.

CHAPTER XI

THE HOUSE OF STUART.—JAMES I.

At the death of Queen Elizabeth the number of temporal peers had only increased to fifty-nine. The Stuarts raised it to about one hundred and fifty,[2] and the House of Lords became once more an important factor in the constitutional history of England.

The King of Scots brought with him to England several Scottish peers. He left almost all the chief offices, however, in the hands of Queen Elizabeth's ministers. Among these, he always treated with the greatest confidence and regard Secretary Cecil—created, successively, Lord Cecil of Essendine, Viscount Cranborne and earl of Salisbury, his prime minister.[3]

'During Lord Salisbury's life our foreign politics,' says Hallam,[4] were 'conducted with as much firmness and prudence as his master's temper would allow.'

King James, however, was a most difficult monarch for any statesman to serve. He had imbibed the Tudor notions of 'absolute power,' and regarded himself as superior to all laws.[5] He enraged his parliament by constantly telling them that they held their privileges merely during his pleasure, and that they had no more business to inquire what he might lawfully do than what the Deity might lawfully do.[6] Unlike

[1] See Hume's *History of England*, chap. xliii. p. 476, chap. xliv. p. 481.

[2] May's *Constitutional History of England*, vol. i. chap. v. p. 229.

[3] Hume's *History of England*, chap. xlv. p. 492.

[4] *Constitutional History of England*, vol. i. chap. vi. p. 333.

[5] Guizot's *History of Civilisation*, i. 231 (Thirteenth Lecture).

[6] See Lord Macaulay's *History of England*, i. 35; and King James's Works, p. 557.

Queen Elizabeth, James I. never gave way to his parliament until it was too late, and his concessions were accepted without gratitude. He prided himself on his 'kingcraft;' but it paved the way for the overthrow of the monarchy.

The accession of the King of Scots to the throne of England, on the other hand, was one of the most fortunate circumstances in our national history. Scotland had, for centuries, been a thorn in the side of England; now the crowns were, for the first time, united, and this led directly to the union of the two parliaments. England and Scotland became merged in Great Britain. The Home Rule movement for setting up a petty parliament in Edinburgh is as hopeless as that of the White Rose for substituting a 'legitimate' sovereign for Queen Victoria.

But not less important than the union of the crowns of Scotland and England in the person of King James VI. of Scotland and I. of England was the plantation of Ulster, which, more than anything else, has hindered Mr. Gladstone's scheme for Irish Home Rule from being carried into effect, the sturdy descendants of the English and Scotch settlers exhibiting a patriotic attachment to the Imperial Parliament. I myself was present when the Duke of Devonshire, then Marquess of Hartington, and also when Mr. Chamberlain visited Belfast, and I can never forget the stern resolve of the descendants of the early settlers to risk civil war rather than have Home Rule. It is the attitude of these Ulstermen, quite as much as a loyal desire for the maintenance of the integrity of the empire, which animates the Liberal Unionists with the splendid zeal for the Union that has covered them and their leaders with imperishable renown.

'The two great native chieftains of the North,' says Hallam, 'Tyrone and Tyrconnel, were attainted of treason. Five hundred thousand acres in Ulster were thus forfeited to the Crown; and on this was laid the foundation of that great colony which has rendered that province, from being the seat of the wildest natives, the most flourishing, the most Protestant, and the most enlightened part of Ireland. The plantation was chiefly carried out by the Lord Deputy, Sir Arthur

Chichester, a man of great capacity, judgment, and prudence. Before the reign of James Ireland had been regarded either as a conquered country or as a mere colony of English, according to the persons or the provinces which were in question. The whole island now took a common character as a subordinate kingdom, inseparable from the English Crown.[1]

'The new settlers,' says Lord Macaulay,[2] 'were, in civilisation and intelligence, far superior to the native population.'

'To consider James in a more advantageous light,' says Hume, 'we must take a view of him as a legislator of Ireland. In the space of nine years, according to Sir John Davis, he made greater advances towards the reformation of that kingdom than had been made in the 440 years which had elapsed since the conquest was first attempted.[3] The whole province of Ulster having fallen to the Crown by the attainder of rebels, a company was established in London for planting new colonies in that fertile country; the property was divided into moderate shares, the largest not exceeding 2,000 acres; tenants were brought over from England and Scotland; the Irish were removed from the hills and fastnesses and settled in the open country; husbandry and arts were taught them, and fixed habitation secured; plunder and robbery punished; and, by these means, Ulster, from being the most wild and disorderly province of all Ireland, soon became the best cultivated and the most civilised.'[4]

'In its material results,' says the author of 'The History of the English People,' 'the plantation of Ulster was undoubtedly a brilliant success. Farms and homesteads, churches and mills, rose fast amid the desolate wilds of Tyrone. The Corporation of London undertook the colonisation of Derry, and gave to the little town the name which its heroic defence has made so famous. The foundations of the economic prosperity which has raised Ulster high above the rest of

[1] *Constitutional History of England*, vol. iii. chap. xviii. pp. 380, 382.
[2] *History of England*, vol. i. chap. i. pp. 50, 51.
[3] Sir John Davis, pp. 166, 167, 173, 237–280; King James's Works, p. 259 (ed. 1613).
[4] *History of England*, chap. xlvi. p. 504.

Ireland in wealth and intelligence were undoubtedly laid in the Confiscation of 1610.'[1]

The city of London has long been intimately associated with Ulster through the Irish Society and several of the larger city companies; and the great linen trade of Ulster, which the Home Rulers so much dislike, forms an industrial bond of union between the northern province and the metropolis of the empire.

CHAPTER XII

THE HOUSE OF STUART.—CHARLES I.

CHARLES I. had received from nature a far better understanding, a far stronger will, and far keener and firmer temper than his father's. He had inherited his father's political theories and was much more disposed than his father to carry them into practice. Charles had some of the qualities of a good and even of a great prince. He wrote and spoke, not like his father, with the exactness of a professor, but after the fashion of intelligent and well-educated gentlemen. His taste in literature and art was excellent, his manner dignified, though not gracious, his domestic life without blemish.

This is the language, not of a 'bigoted Tory,' but of the Liberal historian, Lord Macaulay.[2]

Hume[3] says:—'It may be affirmed that his dignity was free from pride, his humanity from weakness, his bravery from rashness, his temperance from austerity, his frugality from avarice; all these virtues in him maintained their proper bounds and merited unreserved praise.' To crown all, 'he had a sense of religion,' says Hallam,[4] 'that seemed more real than in his father.' He was a loyal son of the Church of England, which, until comparatively recent times, celebrated his memory as 'King Charles the Martyr.'

[1] *The History of the English People*, by J. R. Green, vol. iii. book vii. chap. vi. pp. 154, 155.
[2] *History of England*, vol. i. chap. i. p. 40.
[3] *History of England*, chap. lix. p. 633.
[4] *Constitutional History of England*, vol. i. chap. vii. p. 374.

Lord Macaulay has explained his one vice, apparent want of good faith (which so enraged parliament and the Parliamentarians) in a manner which I am inclined to think is correct :—

'There is reason to believe that he was perfidious, not only from constitution and from habit, but also on principle. He seems to have learned from the theologians whom he most esteemed that between him and his subjects there could be nothing of the nature of mutual contract; that he could not, even if he would, divest himself of his despotic authority; and that, in every promise which he made, there was an implied reservation that such promise might be broken in case of necessity; and that of the necessity he was the sole judge.' [1]

The House of Commons in the Long Parliament, which ended so ignobly, conferred, in its earlier years, lasting benefits on the nation. The Star Chamber and the High Commission Court were abolished; the raising of ship-money was condemned, tonnage and poundage were declared to be dependent upon grant by the Commons.

All constitutional writers wax eloquent over the achievements of the Long Parliament during this—the patriotic—portion of its career. The names of Pym and Hampden are associated with those of Archbishop Langton and the Earl of Pembroke, and with those of Humphrey Bohun, Earl of Hereford and Essex, and Roger Bigod, Earl of Norfolk, as benefactors of their country.

'The peculiar glory,' says Lord Macaulay,[2] 'of the Houses of Parliament is that, in the great plague and mortality of constitutions, they took their stand between the living and the dead. At the very crisis of our destiny, at the very moment when the fate which had passed over every other nation was about to pass over England, they arrested the danger.'

In the most useful reforms which were made during the first session of the Long Parliament, the peers concurred

[1] Lord Macaulay's *History of England*, vol. i. chap. i. pp. 40, 41.
[2] *Critical and Historical Essays*, i. 73. Critique on Hallam's *Constitutional History*.

heartily with the Lower House, and a large minority of the English nobles stood by the popular side through the first years of the war. At Edgehill, Newbury, Marston, and Naseby the armies of the parliament were commanded by members of the aristocracy. It was not forgotten that a peer had imitated the example of Hampden in refusing the payment of ship-money, or that a peer had been among the six members of the legislature whom Charles illegally impeached.

There was no great party hostile to the Upper House. There was nothing exclusive in the constitution of that body. It was regularly recruited from among the most distinguished of the country gentlemen, the lawyers and the clergy. The most powerful nobles of the century which preceded the civil war had all been commoners. Nor had the general conduct of the peers been such as to make them unpopular.

They had not, indeed, in opposing arbitrary measures, shown as much eagerness and pertinacity as the Commons; but still they had opposed those measures. They had, at the beginning of the discontents, a common interest with the people. If Charles had succeeded in his scheme of governing without parliaments, the consequence of the peers would have been grievously diminished. If he had been able to raise taxes by his own authority, the estates of the peers would have been as much at his mercy as those of the merchants or the farmers. If he had obtained the power of imprisoning his subjects at his pleasure, a peer ran far greater risk of incurring the royal displeasure, and of being accommodated with apartments in the Tower, than any city trader or country squire.[1]

The Long Parliament met in 1640. In 1642 its downward career began by the removal of the lords spiritual from the House of Lords. The question had been mooted in June 1641;[2] but the House of Lords resolved that the bishops should retain their votes and seats in parliament; and when the Commons sent up a bill 'to disable the bishops and clergy from all temporal functions,' the House of Lords, after two conferences with the Commons, threw it out. They declared

[1] Lord Macaulay's *Critical and Historical Essays*, i. 326 ('Sir James Macintosh's *History of the Revolution*').

[2] Rush. iv. 281.

the bill an invasion of their rights, and said 'the Commons might, with equal reason, cut off the barons, or any other class of the peerage.'[1]

It was quite clear that the attack was only part of a scheme for the 'abolition of prelacy.'

It was not till the year 1642 that the bill 'for taking away the bishops' votes in Parliament' became law.[2]

Hume says[3] that it would not have passed the Lords but for the flight, or terror, or despondency of the king's party. Such threats were used to the bishops by the populace, that all except three absented themselves from the House of Lords. The three who continued at their posts voted against the bill for removing them from the House of Lords. Twelve of the bishops who absented themselves published a protest against all that should be done in the House of Lords during their compelled absence. For this these twelve bishops were impeached, being charged with treason (!) on account of their protestation, which, Hallam says,[4] 'was abundantly justifiable in its argument by the plainest principles of law.'

And now a new obstacle to the bill presented itself. The king, who was a loyal member of the Church of England, refused to give the royal assent to the bill, and was supported by another loyal son of that Church, the Earl of Clarendon, in his refusal. The queen, however, who was a foreigner and a Roman Catholic, persuaded him to assent. 'The queen could not,' says Hallam,[5] slyly, 'be expected to have much tenderness for a Protestant episcopacy.'

The king always entertained a notion that the act depriving the bishops of their votes in parliament was null in itself. In one of his proclamations from York he declared his intention to preserve the privilege of the *three* estates of parliament.[6]

It is laid down by a high legal authority, Mr. Serjeant Stephen,[7] that 'all bills that may in their consequences in any

[1] *History of England*, by Sir James Mackintosh, vol. v. p. 273.
[2] *Ibid.* pp. 295, 296. [3] *History of England*, chap. lv. p. 586.
[4] *Constitutional History of England*, vol. ii. chap. ix. p. 142.
[5] *Ibid.* p. 117, n. (n). [6] See *ibid.* p. 142 and n. (m).
[7] *Commentaries on the Laws of England* (11th edit.), vol. ii. book iv. part i. chap. i. p. 358.

way affect the rights of the peerage are, by the custom of parliament, to have their first rise and beginning in the House of Peers, and to suffer no changes or amendments in the House of Commons.'

At the Restoration an act was passed which recited that the Act of the 16 Car. I. c. 27, ejecting the lords spiritual from parliament, made alterations prejudicial to the constitution and ancient rights of parliament, and contrary to the laws of this land, and was, by experience, found otherwise inexpedient; and it was enacted that the said act, and every clause, matter, and thing therein contained, is hereby, from henceforth, repealed, annulled, and made void, to all intents and purposes whatsoever.' [1]

The hard usage which Charles I. seemed to endure in so many encroachments on his ancient prerogative awakened the sympathies of a generous aristocracy, accustomed to respect the established laws, and to love monarchy as they did their own liberties, on the score of its prescriptive title; averse also to the rude and morose genius of Puritanism, and not a little jealous of those upstart demagogues who already threatened to subvert the graduated pyramid of English society.[2]

The Lords did a high public service in 1640 when they endeavoured to mediate between the king and his people till reconciliation became impracticable.[3] The support which the House of Lords gave to Charles I. was, however, of a discriminating character. Hume[4] points out that when an address arrived from the city of London petitioning for a parliament, for which twelve noblemen also petitioned, and the king contented himself with summoning a great council of the peers at York, thinking that in his distress he might be enabled to levy supplies by the authority of the peers alone, that constitutional body gave this unconstitutional project no countenance; and as the king foresaw that the great council of the peers would advise him to call a parliament, he told them in his first speech that he had

[1] 13 Car. II. stat. i. chap. ii.
[2] Hallam's *Constitutional History of England*, vol. ii. chap. x. p. 152.
[3] *Protests of the Lords*, by Professor Thorold Rogers, preface, p. x.
[4] *History of England*, chap. liii. p. 560.

already taken this resolution. Thus, the great principle that money bills can only originate with the House of Commons [1] was vindicated through the Peers. On the other hand, when the House of Commons voted for declaring it 'treason' in a king to levy war against his parliament, and for appointing a High Court of Justice to try Charles for this newly-invented 'treason,' and sent this note up to the House of Peers, that House, without one dissenting voice, and almost without deliberation, instantly rejected the vote of the Lower House.[2] The House of Lords is free from the guilt of regicide.

The House of Commons, in the month of May, 1646, voted that they held themselves obliged by the fundamental laws of the kingdom, and their covenant to preserve the peerage, with the rights and privileges belonging to the House of Peers, equally with their own.[3]

In May 1647 a petition was addressed 'to the supreme authority of this nation, the Commons assembled in parliament.' It was voted, upon a division, that the House dislikes this petition, and cannot approve of its being delivered. Afterwards, by a narrow majority, it was resolved that the petition was seditious and insolent, and should be burnt by the common hangman.[4]

On April 28, 1648, the House of Commons voted, by 165 to 99, that they 'would not alter the fundamental government by King, Lords, and Commons.' [5]

On February 1, 1649, the House of Lords resolved [6] that they would 'take into consideration the settlement of the government of England and Ireland in this present conjuncture of things, upon the death of the king;' and nine lords were appointed to join with a proportionable number of the House of Commons for that purpose. The messengers, however, sent by the Lords to the Commons were

[1] See, on this subject, the discussion on the Repeal of the Paper Duties, chap. xx. *infra*.
[2] See Hume's *History of England*, chap. lix. p. 630.
[3] *Commons' Journals*, May 13 and 19, 1646.
[4] *Ibid.* May 4 and 18, 1647.
[5] *Ibid.* April 28, 1648. *Parl. Hist.* vol. iii. 883.
[6] *Parl. Hist.* vol. iii. 1282, 1283.

not admitted. On February 6, 1649, the House of Lords met for the last time prior to the vote of the Rump of the House of Commons abolishing them, and adjourned 'till ten o'clock to-morrow.'[1] It proved an adjournment *ad longum diem*. That 'morrow' was April 25, 1660.[2]

A motion was made on February 6, 1649, in the House of Commons, that they would 'take the advice of the House of Lords in the exercise of the legislative power,' and this motion was only rejected by a majority of 44 to 29—15 votes.[3]

Only once during the 600 years of its existence has the House of Commons arrogated to itself the sole power in the State, and that was after all the Presbyterian members had been violently expelled. On account of the refusal of the Lords to agree to the trial of the king, the tiny Rump, in a house of some sixty members, on January 4, 1649, passed an oft-quoted resolution:—[4]

'The Commons of England assembled in parliament, being chosen by the people and representing them, are the supreme authority of the nation; and whatever is enacted and declared to be law by the Commons hath the force of law without the consent of the king or the House of Lords.'[5]

This is exactly what the advocates of revolutionary measures are asserting now. The House of Lords is the only obstacle to their attempts to subvert the Constitution in Church and State; and hence the cry of 'Down with the House of Lords!' is raised. Happily, we have not yet reached the point of civil war, which alone made the carrying out of the resolution of 1649 possible.

[1] *Lords' Journals*, February 6, 1649.

[2] *Parl. Hist.* vol. iii. 1285; Hallam's *Constitutional History of England*, vol. ii. chap. x. p. 234.

[3] *Parl. Hist.* vol. iii. 1284, 1285, and Hallam, *ubi supra*.

[4] *Parl. Hist.* vol. iii. 1257. See Whitelock's *Memorials*, pp. 366, 367. (Ed. 1732).

[5] Mr. Frederic Harrison terms the (so-called) parliament which passed this resolution 'the mere ghost of a parliament.' 'Cromwell's dismissal of the Rump in April 1653 was the virtual dissolution of the mere ghost of a parliament by the *de facto* dictator.' 'It is with "Pride's Purge," in 1648, and not with Cromwell's dismissal in 1653, that the Long Parliament of 1640 virtually ends.' *Life of Oliver Cromwell*, by Frederic Harrison, pp. 126, 127.

'It is unlikely,' says Mr. Arnold White,[1] 'that the House of Lords is in immediate danger, unless, as in 1649, the naval and military powers support a revolution, and maintain, as their creature, a mutilated House of Commons to carry out their behests. A resolution of the House of Commons, not supported by the Horse Guards and the Admiralty, would have no effect on the Upper Chamber.'

As Field-marshal Sir Lintorn Simmons has pointed out,[2] 'whatever the force, by the action of which Mr. John Morley thinks, or desires, that his policy may be accomplished—whether he contemplates the Spanish mode of procedure by military *pronunciamiento*, or the French method of raising barricades, or the invasion of the House of Lords by the police—his policy, if attempted, will undoubtedly lead to civil war.'

If a civil war rendered such an event again possible, there is little doubt that the triumphant dictators would soon render themselves so odious by their tyranny, that a monarchical and aristocratic reaction would again be sure to follow, and the whole British empire would rejoice at the restoration of the Constitution.

The Rump of the Long Parliament, as soon as they had decided that 'the House of Peers is useless and dangerous,[3] and that an act (*sic*) should be brought in for abolishing it,' voted that 'it has been found by experience that the office of a king in this nation, or to have the power thereof in any single person, is unnecessary, burdensome, and dangerous to the liberty, safety, and public interest of the nation, and that

[1] *The English Democracy, its Promises and Perils*, chap. vii. p. 110.

[2] Letter to the *Times*, November 17, 1893. In his speech at Bradford Lord Rosebery takes a more sensible view than Mr. Morley: 'Some people say, "Abolish the House of Lords" (a voice, "Hear, hear!"). My friend says so. Very well; but how would he abolish the House of Lords unless he is prepared to walk, like Cromwell, into the House of Lords with a *Posse Comitatus* behind him, and the support of the country at his back?' *Daily News*, October 29, 1894.

[3] *Parl. Hist.* vol. iii. 1284. February 6, 1649. It is not a little amusing that the Earl of Rosebery and the 'Eighty Club' are going to the country with the cry, 'The House of Peers is a *danger!*' the cry of the 'Rump.' 'The only chance of rousing the stolid (!) Anglo-Saxon is by inducing the conviction of *danger*.' *The House of Lords an Anomaly and a Danger*, by T. A. Spalding, LL.B., p. 4.

an act (*sic*) should be brought in to abolish it.'[1] Bills were brought in accordingly, and carried by the meagre votes of the 'Rump.'[2]

'All have agreed by common consent,' says Sir James Mackintosh in his 'History of England,'[3] 'that the great experiment of the Commonwealth has proved the impracticability of republican government in England.'

Who that has followed the questions put to ministers and the debates in the House of Commons but must have been struck with the circumstance that the members of that House, who show an animus against Royalty, are precisely the members who show an animus against the House of Lords? The meeting at the Drill Hall of Portsmouth, held on last St. Valentine's Day, first hooted the 'National Anthem,' and then cried, 'Down with the House of Lords!' The significance of this association of the throne and the peers in the policy of destruction was emphasised by the fact that the meeting was simply a supplement to the annual meeting of the delegates of the 'National Liberal Federation.'[4]

The necessity for an hereditary assembly, as an essential safeguard to an hereditary monarchy, has been so admirably described by a distinguished French writer,[5] that I cannot do better than quote his wise and statesmanlike observations:—'In an hereditary monarchy it is indispensable that an hereditary assembly, as one of the branches of the legislature, should exist. It is scarcely possible to imagine that, in a nation where such an hereditary assembly was not in existence, and where all distinction by birth was rejected, the highest dignity in the realm, that which most affects in its

[1] *Parl. Hist.* vol. iii. 1285. February 7, 1649.

[2] Abraham Reynoldson's name deserves to be held in honour. He was Lord Mayor of London, and refused to proclaim the act, abolishing the monarchy, in the city. He could not, he said, 'dispense with his conscience.' For this he was dismissed from the office of lord mayor, fined 2,000*l.*, and committed, as a prisoner, to the Tower. *Parl. Hist.* vol. iii. 1305, 1306.

[3] Vol. v. chap. vi. p. 228.

[4] See also a speech of Mr. John Burns, M.P., on Sunday, February 11, 1894 (reported in the *Times* of February 12, 1894), on the Throne and the Peers.

[5] M. Benjamin Constant in *Principes de Politique*, vol. i. chap. iv.

functions the repose and the interests of the nation, hereditary monarchy, could be retained. If monarchy is anywhere found without an hereditary assembly of legislators, such a monarchy is pure despotism. The elements of that government, which consists of a sovereign, unassisted by an assembly of hereditary legislators, are a monarch who commands, an army which executes, and a people who obey. To give freedom to a nation governed by an hereditary monarch, an intermediate body must exist between the sovereign and the popular assembly.'[1]

It is a remarkable fact that the monarchy and the House of Lords fell at the same time, and were restored at the same time.

CHAPTER XIII

THE REGICIDES' CRUSADE AGAINST THE CONSTITUTION

'Mr. Balfour will labour in vain to cut the genealogical tree of principle which unites the reformers of to-day with those of the past. On one point, above all, he may be quite sure that Radicals have always agreed, and always will, until there is no longer any necessity for them to think about the matter at all, namely, that the House of Lords is dangerous, useless, and ought to be abolished.'[2]

The leading sensational Radical journal thus distinctly recognises the neo-Radical party as the lineal descendants of the regicides who constituted the meagre Rump of the Long Parliament![3]

The little or 'Barebones' parliament was unicameral. The session lasted about 5 months, from July 4 to December 12, 1653. It consisted of 139 members, not one of whom was elected by any constituency. They were selected and summoned

[1] A translation of M. Constant's observations will be found in Mackinnon's *History of Civilisation*, vol. i. chap. xvi. p. 337.

[2] The *Daily Chronicle*, February 5, 1894.

[3] The Earl of Rosebery seemed to sympathise, at Bradford, with the view of the *Daily Chronicle*, for he addressed his audience as 'Old Ironsides,' though doubtful of his own ability to act the part of Cromwell!

by Oliver Cromwell and his council, and, to prevent misunderstandings, each member was duly informed of the name of the place which he was supposed to represent! Most of its bills were read a first and second time upon the same day, and some of them became law (?) upon the day following! For lightning-like speed in legislation no parliament has ever equalled this nominated assembly! And yet it only passed twenty-seven Bills, five of them local and personal! None of its bills were vetoed by the Protector.[1]

The next 'parliament,' which was also unicameral, was elected under 'the Instrument of Government,' and sat from September 3, 1654, till January 22, 1665, when it was dissolved, having lasted between four and five months. Only fifteen bills were introduced, and not one of them reached the stage of presentation to the Protector for his consent. Only four out of the fifteen bills ever reached the committee stage, and only one of them ever emerged from it. Its record is—public acts, none; private acts, none; total, none.

The second parliament under 'the Instrument of Government,' which was also unicameral, met on September 17, 1656, and sat continuously until June 26, 1657. The number of its public bills which became law (?) was only twenty-nine, although the period of its labours extended to ten months! It exactly fulfilled Mr. Labouchere's ideal. Every bill passed by the Commons in the session became law in that session. The Protector assented to every measure presented to him.[2]

With the second parliament under 'the Instrument of Government' was associated a new Second Chamber called into existence under 'the Humble Petition and Advice.' The bicameral arrangement lasted from January 20 to February 4, 1658, when the reconstructed parliament was dissolved. [3]

The futile efforts of Oliver Cromwell to establish 'somewhat to stand between me and the House of Commons,' [4]

[1] The *Times*, September 13, 1894. 'Leeds and the Lords,' I.
[2] *Ibid.* [3] *Ibid.*
[4] See *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, LL.B., chap. v. p. 55.

have been so vividly and graphically described by a Liberal historian[1] that I cannot do better than give his *ipsissima verba*:—

'A House of Commons was a necessary part of the new polity. In constituting this body the Protector showed a wisdom and public spirit which were not duly appreciated by his contemporaries. To create a House of Lords was a less easy task. Democracy does not require the support of prescription. Monarchy has often stood without that support. But a patrician order is the work of time. Oliver found already existing a nobility, opulent, highly considered, and as popular with the commonalty as any nobility has ever been. It was to no purpose that he offered to chiefs of illustrious families seats in his new senate. They conceived that they could not accept a nomination to an upstart assembly without renouncing their birthright and betraying their order. The Protector was, therefore, under the necessity of filling his Upper House with new men, who, during the late stirring times, had made themselves conspicuous. This was the least happy of his contrivances and displeased all parties. The Levellers were angry with him for instituting a privileged class. The multitude, which felt respect and fondness for the great historical names of the land, laughed, without restraint, at a House of Lords in which lucky draymen[2] and shoemakers[3] were seated, to which few of the old nobles were invited, and from which almost all those old nobles who were invited turned disdainfully away.

'The first House of Commons, which the people elected by his command, questioned his authority, and was dissolved without having passed a single act. His second House of Commons, though it recognised him as Protector, and would gladly have made him king, obstinately refused to acknowledge

[1] Lord Macaulay in his *History of England*, vol. i. chap. i. pp. 65, 66.

[2] Col. Pride ('Pride's Purge').

[3] Hewson. See *Ludlow's Memoirs*, p. 252. In the list of Cromwell's 'House of Lords,' given in *Parl. Hist.* iii. 1518, 1519, these 'Peers' are described as 'Sir Thomas Pride' and 'Sir John Hewson.' (Cromwell 'knighted' Pride 'with a faggot stick.' *Ludlow*, p. 248.)

his new lords.' As Hallam[1] points out, Oliver Cromwell's House of Commons persisted in calling his House of Lords, 'with an awkward generality,' 'the other House.' The 'Petition and Advice' sanctioned the name of 'the Lords' House'; but the republican party, 'almost as much attached to that vote which had declared the House of Lords useless as to that which had abolished the monarchy,' and 'well aware of the intimate connection between the two, resisted the assumption of that title. So many difficulties were made that the Protector hastily and angrily dissolved the parliament.'

Mr. Gilbert must have had Oliver Cromwell's 'Lords' House' in mind when he wrote 'Iolanthe.' 'The lucky draymen and shoemakers' who excited the risibility of 'the multitude' would have been exactly the men to have polished up their coronets on returning home from their legislative toil.

Even Mr. Frederic Harrison,[2] the panegyrist of Cromwell, candidly admits that 'his "Upper House," or "House of Lords," was an utter failure.'

The most recent biographer of Cromwell,[3] who considers him 'the wonder of Europe and the glory of his age,'[4] writes thus of his 'House of Lords':—[5]

'The experience of this "other House" was very dismal. The House of Commons refused to treat it with any respect; its pretensions were received with very general contempt, and even Cromwell became ashamed of it.'

The Lords had, at a crisis of great excitement, been excluded by military violence from their House, but they retained their titles and an ample share of the public veneration.[6] When a nobleman made his appearance in the House of Commons he was received with ceremonious respect. Those

[1] *Constitutional History of England*, vol. ii. chap. x. pp. 260–1.
[2] *Oliver Cromwell*, by Frederic Harrison, p. 207.
[3] Samuel Harden Church.
[4] *Oliver Cromwell; a History*, p. 492. [5] P. 472.
[6] Lord Macaulay's *Critical and Historical Essays*, i. 325. Mr. St. John Brodrick, Mr. Curzon, and Lord Wolmer (see their article in the *Nineteenth Century* for April 1894) must go back to the Commonwealth for a precedent for their proposal that *English* peers should be eligible for seats in the Lower House. See Whitelock's *Memorials*, p. 390 (Ed. 1732).

few peers who consented to assist at the inauguration of the Protector, were placed next himself, and the most honourable offices of the day were assigned to them. We learn from the debates of Richard Cromwell's parliament how strong a hold the old aristocracy had on the affections of the people.

So intimate is the connection between the monarchy and the House of Lords that, in the opinion of Hallam,[1] if Oliver Cromwell had assumed the kingly crown, 'the legislative right' of 'the nobility must immediately' have 'revived;' and the need for his bogus substitute would have no longer vexed his soul.

From January 22, 1655, when Cromwell's second parliament ceased to exist, until the summoning of another parliament in September 1656, 'the country was governed in an arbitrary manner, that would not have been possible even under the Tudors. Money was raised without authority, men were sentenced to death or imprisonment by illegal tribunals, and in consequence of certain abortive attempts at rebellion the country was parcelled out into eleven districts, which were placed under the command of major-generals, who ruled like semi-military despots. The nation was rapidly drifting into anarchy. Government by the House of Commons and one person had failed as signally as had government by the House of Commons alone.'[2]

'It was a crime,' says Lord Macaulay,[3] 'in a child to read by the bedside of a sick parent one of those beautiful collects[4] which had soothed the griefs of forty generations of Christians.'

'The Revolution of 1648,' says Mr. Rogers,[5] 'was a revolution initiated by a section of the Lower Chamber and completed by the army. Its authority was, therefore, always in dispute; the vast majority of the Lords had always resented

[1] *Constitutional History of England*, vol. ii. chap. ix. p. 255.

[2] This passage, containing so many unwelcome truths for republicans, is taken from *The House of Lords*, by T. A. Spalding, LL.B., chap. iv. p. 40.

[3] *History of England*, vol. i. chap. ii. p. 77.

[4] The reading of the Book of Common Prayer, even in private houses, was interdicted.

[5] *Protests of the Lords*, preface, p. xxxi.

and repudiated it,[1] and reaction against it was inevitable and speedy.'

In the year 1659 it is manifest that no idea could be more chimerical than that of a republican settlement in England. The name, never familiar or venerable in English ears, was grown infinitely odious: it was associated with the tyranny of ten years, the selfish rapacity of the Rump, the hypocritical despotism of Cromwell, the arbitrary sequestrations of committee-men, iniquitous decimations of military prefects, the sale of British citizens for slavery in the West Indies, the blood of some shed on the scaffold without legal trial, the tedious imprisonment of many with the denial of the habeas corpus, the exclusion of the ancient gentry, the persecution of the Anglican Church, the bacchanalian rant of sectaries, the morose preciseness of Puritans, the extinction of the frank and cordial joyousness of the national character.[2]

I would advise the neo-Radicals to consult the 'Statutes at Large.' They will there find no mention whatever made of the legislation which the House of Commons (or rather, the Rump of the Long Parliament) attempted to pass by its sole authority. There is a leap from the 16 Car. I. to the 12 Car. II., the 12 Car. II. being, as a matter of fact, the year 1660, in which the Restoration took place. The Commonwealth is simply ignored, as if it had never controlled the destinies of England, but had been a hideous dream.

CHAPTER XIV

THE HOUSE OF STUART.—CHARLES II.

THE delight of the nation at the restoration of its ancient constitution was unbounded. The rigour of a military despotism was utterly alien to the tastes and habits of English-

[1] They retained their titles not only in common usage, but in all legal and parliamentary documents, throughout the Commonwealth. Hallam's *Constitutional History of England*, vol. ii. chap. x. p. 235.

[2] Hallam's *Constitutional History of England*, vol. ii. chap. x. pp. 274, 275.

men, and republican institutions were abhorrent to the loyalists, who really formed the great majority of the inhabitants of these islands.

In 1660 the whole nation was mad with loyal excitement. If we had to choose a lot from among all the multitude of those which men have drawn since the beginning of the world, we should select that of Charles II. on the day of his return. Elizabeth, after the destruction of the Armada, and after the abolition of monopolies, had not excited a thousandth part of the enthusiasm with which the young exile was welcomed home.[1]

The continuity of the legislature was preserved by the House of Lords at the Restoration.

On April 25, 1660, the doors of the House of Lords were found open, and ten peers, all of whom had sat in 1648, took their places as if nothing more than a common adjournment had passed in the interval. These were the Earls of Manchester, Northumberland, Lincoln, Denbigh and Suffolk, Lords Say, Wharton, Hunsdon, Grey, and Maynard.[2] To some of the peers who had come to their titles since the conclusion of the civil war, and whom there was no colour of justice nor any vote of the House to exclude, they caused letters to be directed, and the others took their seats without objection on April 26 and 27. On the 27th thirty-eight peers were present. Those who had joined Charles I., and had been excluded from sitting in the House by votes of the Long Parliament, were next admitted. An order, indeed, was made that no lords, created by the late king and by Charles II. when in exile, since the great seal had been taken to York in 1642, should sit; but this was vacated by a subsequent resolution of May 31.

In the Convention Parliament the House of Lords distinctly took the lead.[3] A message was sent down to the Commons on April 27, desiring a conference on the great affairs of the kingdom. It was the first time that the word

[1] *Critical and Historical Essays*, by Lord Macaulay, vol. i. pp. 323, 324.
[2] *Lords' Journals*, April 25, 1660.
[3] See *Clarendon State Papers* and *Lords' Journals*.

'kingdom' had been used for eleven years. The Commons assented to the conference, following the Lords' initiative, but using the word 'nation' instead of 'kingdom.' The conference was fixed for the first of May.

When the conference took place, the Earl of Manchester let the Commons know that 'the Lords do own and declare that according to the ancient and fundamental laws of this kingdom the government is, and ought to be, by King, Lords, and Commons.'[1] On the same day the Commons resolved to agree in this vote.[2]

It would have been well if Parliament, at the Restoration, had insisted on the guarantees of constitutional freedom which were subsequently exacted from William of Orange at the Revolution.

The Habeas Corpus Act,[3] however, is due to the lovers of freedom in the reign of Charles II.

The 13 Charles II. statute 2, chapter 2, is the earliest legislative enactment which contains the precise form now in use for embodying the concurrence of King, Lords, and Commons:—

'Be it enacted by the King's Most Excellent Majesty,[4] by and with the advice and assent of the Lords Spiritual and Temporal and Commons, in this present parliament assembled, and by the authority of the same.'

The ineradicable vice of duplicity was, unhappily, engrained in the Stuart blood of the second Charles, and the suspicion that he was playing a double part rankled in the breasts of his subjects, and did away with the good effects of his *bonhomie* and affability, so different from the *hauteur* and reserve of Charles I.

If there was a person for whom he felt a real regard, that person was his brother. If there was a point about which he really entertained a scruple of conscience, that point was the

[1] Hallam's *Constitutional History*, vol. ii. chap. x. pp. 298–300; *Parl. Hist.* vol. iv. 24; *Lords' and Commons' Journals.*

[2] *Parl. Hist.* vol. iv. 25.

[3] 31 Car. II. cap. ii. (1679).

[4] 'It is impossible to deny that, while the king promulgated a statute founded upon a mere petition, he was himself the real legislator.' Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 92 n. (h).

descent of the Crown. Yet he was willing to consent to the Exclusion Bill for £600,000, and the negotiation was broken off only because he insisted on being *paid beforehand*.[1]

It was not till after his death that the nation learnt, with a sense of deep shame and humiliation, that the King of England, to escape from dependence on his subjects for money, had become the pensioner of the King of France, and that the son of so loyal a scion of the Church of England as 'King Charles the Martyr' was hankering after the Church of Rome, while taking the sacrament in the Established Church.

CHAPTER XV

THE HOUSE OF STUART.—JAMES II.

As the constitutional defenders of hereditary right, whether on the throne or in their own Chamber, the House of Lords had voted against the Exclusion Bill in 1680, and thus were instrumental in placing the Duke of York on the throne, to which he succeeded without opposition.

The new king at first justified their choice by his demeanour before the privy council, immediately after his brother's death. 'He was aware,' he said, 'that he had been accused of a fondness for arbitrary power; but that was not the only falsehood which had been told of him. He was resolved to maintain the established government, both in Church and State. These statements were, with his permission, published in the "London Gazette."'[2]

The persons in whom the king placed the greatest confidence were the ambassador of Louis Quatorze (the persecutor of the Huguenots), the nuncio (representing the Pope, under whose sanction the Inquisition was burning heretics), and Father Petre, the Jesuit. Under their inspiration he imitated the conduct of Mary by taking the law into his own hands for the purpose of restoring the papal supremacy, and he

[1] Lord Macaulay's *Essays*, i. 328.

[2] February 9, 1685 [1684, O.S.]; Evelyn's *Diary*, February 6; Barillon, February 9; Clarke's *James II.* ii. 3.

acted on the motto, 'Divide and conquer,' by setting nonconformists and church-people at variance.

He exercised a dispensing power with regard to statutes, and he used his royal supremacy against the Church.

The deanery of Christ Church, Oxford, became vacant; and John Massey, a Roman Catholic, was appointed by virtue of the dispensing power, and soon within the walls of Christ Church Cathedral mass was daily celebrated.[1] Another Roman Catholic was made president of Magdalen College, Oxford. The Vice-chancellor of Cambridge was degraded by Judge Jeffreys for refusing to admit Alban Francis, a Benedictine monk, to be a master of arts. The papal nuncio was consecrated Archbishop of Amasia in the chapel of St. James's Palace. 'We firmly believe,' says Lord Macaulay,[2] 'that not one post in the government, in the army, in the navy, on the bench, or at the bar, not one peerage, nay, not one ecclesiastical benefice in the royal gift, would have been bestowed on any Protestant of any persuasion.'

The Roman Catholics would have had a majority in the House of Lords, even if that majority had been made, as Sunderland threatened, 'by bestowing coronets on a whole troop of guards.'

On April 4, 1689, appeared the 'Declaration of Indulgence,'[3] which pretended to annul, by the sole authority of the royal prerogative, a long series of statutes which placed the nonconformists and Roman Catholics under certain disabilities. The document was thoroughly unconstitutional, and such only as an absolute monarch could issue. The nonconformists in this crisis of their country's fate acted splendidly. To their deathless honour they steadily refused to accept such a boon coming from such a quarter, Baxter and Bunyan amongst them. As for the Church of England, the trial of the seven bishops on a charge of seditious libel in petitioning the king against the use of his 'dispensing power,' which they declared to

[1] Gutch's *Collectanea Curiosa*; Wood's *Athenæ Oxonienses*; *Dialogue between a Churchman and a Dissenter*, 1689.
[2] *Critical and Historical Essays*, i. 336, 337.
[3] *London Gazette*, March 21, 1687; April 7, 1687.

be 'unconstitutional,' and their triumphant acquittal by a jury of their countrymen, sounded the knell of the Stuart dynasty.

The spirit of opposition to the policy of King James was not confined to the Lords Spiritual. Amongst the Lords Temporal there was an immense majority against the king's measures. Both orders, indeed, took a leading part in placing William, Prince of Orange, on the throne. King James II. endeavoured (like Mr. Gladstone in our own days) to place the Anglo-Saxon Protestants of Ireland under the heel of the Roman Catholic Celts. 'The event was such as might have been foreseen. The colonists turned to bay with the stubborn hardihood of their race. The mother country justly regarded their cause as her own. The effect of the insane attempt to subjugate England by means of Ireland was that the Irish became hewers of wood and drawers of water to the English. The momentary ascendency of popery produced such a series of barbarous laws against popery as made the statute-book of Ireland a proverb of infamy throughout Christendom. Such were the bitter fruits of the policy of James.'

In this eloquent passage that enlightened Liberal, Lord Macaulay,[1] distinctly fastens the responsibility for the penal laws of Ireland on the policy of James II.

CHAPTER XVI

THE REVOLUTION OF 1688

'I AM persuaded,' says Mr. Thorold Rogers,[2] 'that the success of the Revolution of 1688 depended in the main on the fact that a majority of the Upper Chamber was friendly to its principles. The Jacobites were always a small faction in the Lords, but they were often a strong or compact faction in the Commons.'

'From the Revolution to the Reform Bill the government of the country practically centred in the House of Lords.'

'The more effectually to involve everything in confusion,'

[1] *History of England*, vol. i. chap. vi. p. 383.
[2] *Protests of the Lords*, preface, pp. xxx. xxxi.

says Hume,[1] 'the king appointed not any one who should, in his absence, exercise any part of the administration; he threw the Great Seal into the river, and he recalled all those writs which had been issued for the election of a new parliament.

'By this temporary dissolution of government the populace were masters, and there was no disorder which, during their present ferment, might not be dreaded from them.'

After enumerating several tumultuous acts of violence the great historian proceeds:—'Even the army, which should have suppressed these tumults, would, it was apprehended, serve rather to increase the general disorder. Feversham had no sooner heard of the king's flight than he disbanded the troops in the neighbourhood, and, without either disarming or paying them, let them loose to prey upon the country.

'In this extremity the bishops and peers, who were in town, being the only remaining authority in the State (for the Privy Council, composed of the King's creatures, was totally disregarded), thought proper to assemble and to interpose for the preservation of the community. They chose the Marquis of Halifax as speaker; they gave directions to the mayor and aldermen for keeping the peace of the city; they issued orders, which were readily obeyed, to the fleet, the army, and all the garrisons, and they made applications to the Prince of Orange, whose enterprise they highly applauded, and whose success they joyfully congratulated.'

'Feb. 13, 1689. The Lords Spiritual and Temporal, attended by the Right Honourable the Marquis of Halifax, Speaker, and the Commons, attended by G. H. Powle, Esq., Speaker, wait on their Highnesses at Whitehall. The "Declaration of Rights," as adopted by both Houses, is read, and his Highness the Prince returns an answer of acknowledgment and acceptance. The solemnities of the proclamation of their Highnesses *then* take place.'[2]

The Bill of Rights at the Revolution of 1688 declared that 'the pretended power of suspending of laws, or the execution

[1] *History of England*, chap. lxxi. p. 777 (A.D. 1688).

[2] Parry's *Parliaments and Councils of England*, p. 603. Dedicated, by permission to Her Majesty, 1839.

of laws by regal authority, without consent of parliament, is illegal'; 'that the pretended power of dispensing with laws, or the execution of laws by regal authority, is illegal,' and 'that the levying money for or to the use of the Crown, by pretence and prerogative, without grant of parliament, for a longer time, or in other manner than the same is or shall be granted, is illegal.'

These three provisions alone are sufficient to distinguish between an absolute and a limited monarchy; but it was further provided, by the Bill of Rights, that 'the raising, or keeping, a standing army within the kingdom, in time of peace, unless it be with consent of parliament, is against law.'

The annual assembling of parliament was rendered necessary, in the first place, by the strict appropriation of the revenue, according to votes of supply. It was secured, next, by the necessity of passing the Mutiny Bill, under which the army is held together, and subjected to military discipline for a short term, seldom or never exceeding twelve months.

The effectual securities against military power are (1) that no pay can be issued to the troops without a previous authorisation by the Commons in a committee of supply, and by both Houses in an Act of Appropriation, and (2) that no officer or soldier can be punished for disobedience, nor any court martial be held, without the annual re-enactment of the Mutiny Bill.[1]

The direct guarantees of civil liberty in this kingdom are (1) the open administration of justice according to known laws, truly interpreted, and fair constructions of evidence, and (2) the right of parliament, without let or interruption, to inquire into and obtain the redress of public grievances.[2]

'William's resolution to take the Irish war on himself saved not only that country,' says Hallam,[3] 'but England. Our own Constitution was won on the Boyne.[4] The star of the House of Stuart grew pale for ever on that illustrious day, when James displayed again the pusillanimity which had cost him his English crown.'

[1] See Hallam's *Constitutional History of England*, vol. iii. chap. xv. p. 149. [2] *Ibid.* vol. i. chap. v. pp. 230, 231.
[3] *Ibid.* vol. iii. chap. xv. p. 112 n. (n). [4] July 1, 1690.

CHAPTER XVII

QUEEN ANNE

'THE first [House of Commons] of Anne,' says Mr. John Morley,[1] 'was strongly Tory. The House of Lords, numbering, before the union with Scotland, about 190 members, contained the representatives of the great families who had made and guided the Revolution of 1688. Here, therefore, the Whigs held a uniform predominance.'

The most important event in this reign, as affecting the House of Lords, was the change in the policy of that House, owing to the creation of twelve peers *en bloc*.

Lord Salisbury made the following reference to this event when moving the first reading of the 'House of Lords (Life Peers) Bill' in 1888[2]:—'As your Lordships know, the creation of hereditary peers, for the purpose of influencing the decision of the House of Lords, has only been resorted to *once*. It was done for the purpose of passing the resolutions which were necessary in connection with the Treaty of Utrecht. Only twelve peers were created, and yet for creating those twelve peers (among other things) Lord Oxford was impeached by the House of Commons, as having done a thing which was derogatory to the honour of parliament and fatal to the public interests. It was never done again.'

It was part of the scheme to rid Queen Anne of the Marlborough influence. The same 'Gazette' of December 31, 1711, which announced that the queen had dismissed the Duke of Marlborough from all his employments, made known also the creation of twelve new peers.

The enemies of the Duke of Marlborough 'finding,' says Bishop Burnet,[3] 'the majority of the House of Lords could not be brought to favour their designs, resolved to make an experiment that none of our princes had ventured on in former times: a resolution was taken up very suddenly, of making twelve peers,

[1] *Life of Walpole*, p. 6. Mr. Morley calls the House of Commons '*Parliament*,' a significant mistake!

[2] Hansard's *Parl. Deb.* third series, vol. cccxxvii. 390.

[3] *History of His Own Time*, vi. 93, 94.

all at once.'[1] 'Sir Miles Wharton, to whom a peerage was offered, refused it: he thought it looked like the serving a turn; and that, whereas peers were wont to be made for services they had done, he would be made for services to be done by him!'

Somerville, in his 'History of the Reign of Queen Anne,' says[2]:—'Although the power exercised by the Crown upon this occasion was not liable to any legal objection, yet it was justly condemned, not only by the party which it overthrew, but by all the intelligent friends of the Constitution, as establishing a precedent tending to control the independence of the legislature.'

To form this phalanx of new peers the ministers proceeded as follows[3]:—First, they called up by writ the eldest sons of two earls, Northampton and Ailesbury. Next, in the same spirit, they conferred a barony on the eldest son of a peer, less high in rank than the preceding, Lord Paget; and another barony on the eldest son of a Scottish peer, the Earl of Kinnoul; Viscount Windsor, in the Irish peerage, obtained the title of Lord Mountjoy in the English. Two baronets, Sir Thomas Mansell and Sir Thomas Willoughby, became respectively Lord Mansell and Lord Middleton. Sir Thomas Trevor, Chief Justice of the Common Pleas, became Lord Trevor; and George Granville, of Stow, in Cornwall, Lord Lansdowne. Thomas Foley was created Lord Foley, Allan Bathurst Lord Bathurst, and Samuel Masham[4] Lord Masham.

'When,' says Bishop Burnet,[5] 'the 2nd of January [1712] came, they were all introduced into the House of Lords without any opposition, and when that was over, the Lord Keeper delivered a message from the Queen, commanding the peers to adjourn forthwith. The vote was carried for adjourning by the weight of the twelve new peers.'

The twelve new peers were asked, jocosely, 'whether they voted by their foreman'?[6]

[1] 'A very considerable number in relation to the total of those already having seats.' Pike's *Const. Hist. of the House of Lords*, chap. xv. p. 363.
[2] Chap. xix. pp. 460, 461.
[3] Lord Stanhope's *Reign of Queen Anne*, chap. xiv. p. 507.
[4] Husband of the favourite, Mrs. Masham.
[5] *History of His Own Time*, vi, 95. [6] *Ibid.* n. (z).

The enlightened conduct of the House of Lords in this reign, in relation to the great cause of civil and religious freedom, is passed over in silence by the enemies of that House; but, happily, Mr. Lecky has rescued it from oblivion.[1]

Protestant nonconformists, as a body, had been excluded by the Corporations Act of 1661,[2] and by the Test Act of 1673[3] from all corporations and from all public offices. But there were many conscientious dissenters who, while habitually adhering to nonconformist worship, had no scruple about occasionally communicating according to the Anglican rite.

In 1702, 1703, and 1704, measures for suppressing occasional conformity were carried through the House of Commons by large majorities, but were defeated in the House of Lords. In 1702 the Lords, apprehensive that the Commons would try to force the Occasional Conformity Bill through Parliament by means of a 'tack,' had placed on record their opinion that 'the annexing of any clause or clauses to a Bill of Aid or Supply, the matter of which is foreign to, or different from, the matter of the said Bill of Aid or Supply, is unparliamentary, and tends to the destruction of the Constitution.'[4]

In 1703 the Archbishop of Canterbury, Dr. Tenison, 'made a warm speech' against the bill, in the course of which he said:—

'I think the practice of occasional conformity, as used by the dissenters, is so far from deserving the title of "a vile hypocrisy," that it is the duty of all moderate dissenters, upon their own principles, to do it.'[5]

In 1704 an unsuccessful attempt was made to 'tack' the measure to a money bill! Its object was to compel the Lords and the Crown to pass the bill, with its 'tack,' to obviate all the ruin that must attend the stopping of the war.[6]

[1] *History of England*, vol. i. chap. i. pp. 93, 94, 253; 258, 259, 260.

[2] 13 Car. II. stat. 2, cap. 1.

[3] 25 Car. II. cap. 2. (It was aimed at the Roman Catholics, and the dissenters voted for it!)

[4] *Lords' Journals*, xvii. 185; *Parl. Hist.* vol. vi. 61, 62. See May's *Parliamentary Practice*, chap. xxii. p. 552. (10th edition.)

[5] Calamy's *Own Life*, ii. 26, cited by Burton in his *History of the Reign of Queen Anne*, i. 88. Bishop Burnet opposed these bills.

[6] *History of the Reign of Queen Anne*, by J. H. Burton, D.C.L. i. 90, 91.

The 'Tackers,' as they were termed, in their ardent zeal to strike a blow at the dissenters, were blind to the danger of striking a blow also at the landmarks of the Constitution.[1]

Finding that the Lords remained steadfast in their opposition to this cruel and unstatesmanlike measure, the Commons desisted, for seven years, from the attempt to press it upon them.

In 1711, however, a coalition of Whigs and Tories, for the purpose of defeating the negotiations that led to the Peace of Utrecht, afforded the desired opportunity. The coalition was based upon the essential condition that the Occasional Conformity Bill should become law. The bill was introduced in the Lords, and carried through both Houses of Parliament.[2]

'Three times,' says Mr. Lecky,[3] 'the House of Commons, by a large majority, had carried the bill. Since the measure had last been introduced, the election of 1710 had taken place. It had turned expressly upon Church questions, and it proved, beyond all dispute, that the country was on the side of the High Church party. Neither as a matter of principle, nor as a matter of policy, ought the House of Lords to oppose a permanent veto of the wish of the great majority of the Lower House, when that wish clearly reflects the sentiments of the nation. There can be no question that the House of Commons would have carried the measure by a majority at least as large as in former years; and it was stated that the Court was resolved to use its utmost powers to make it law. Under these circumstances the Lords might justly consider that they were consulting their own dignity by taking the first step when concession was inevitable; that a measure, mitigated in some of its provisions by amicable compromise, and taking its rise in a friendly, rather than an unfriendly House, was likely to be less injurious to the dissenters than a measure framed by a hostile party, and carried by another explosion of fanaticism.'

This enactment provided that all persons in places of

[1] *History of the Reign of Queen Anne*, by Lord Mahon (afterwards Earl Stanhope), chap. v. p. 168.

[2] 10 Ann. cap. 2, repealed by the 5 Geo. I. cap. 4, sect. 7.

[3] *History of England*, vol. i. chap. i. pp. 94, 95.

profit or trust, and all common councilmen in corporations, who, while holding office, were proved to have attended any nonconformist place of worship, should forfeit their position, and should continue incapable of public employment, until they should depose that for a whole year they had not attended a conventicle. A fine of 40*l.* was to be paid to the informer.

The recital of the measure was perfectly unique. It was stated to be for 'quieting the minds of Her Majesty's Protestant subjects dissenting from the Church of England'!

A reaction against this sort of legislation took place early in the reign of King George I.; and the House of Lords had the satisfaction of participating in the passing of a measure for its repeal.[1]

Queen Anne 'proceeded to change her ministers with as much eagerness,' says Mr. John Morley,[2] 'as George III. in 1783. There has never been a more rapid electoral transition than that from the great Whig majority in 1708 to the great Tory majority in 1710. Two hundred and seventy members lost their seats.'

Speaking of the year 1713, 'the Whigs,' says Lord Stanhope,[3] 'formed but a feeble fraction of the House of Commons, while in the House of Peers, on the other hand, they continued to exert a manifest ascendency.'

The House of Lords in 1713 consisted of 207 members. In 1830 it consisted of 390. Lord Stanhope thinks this increase was not at all more than commensurate with the improvement of properties and the increase of the population.

CHAPTER XVIII

THE HOUSE OF HANOVER.—THE GEORGES

THE era of the Georges in England may be compared to the era of the Antonines at Rome. It was a period combining happiness and glory, a period of kind rulers, and a prosperous people.

[1] 5 Geo. I. cap. 4.
[2] *Life of Walpole*, pp. 18, 19.
[3] *History of England*, by Lord Mahon, vol. i. chap. ii. pp. 62, 63.

Unlike the era of the Antonines, this prosperity did not depend on the character of a single man.[1] Its foundations were laid on ancient and free institutions, which, good from the first, were still gradually improving, and which alone, amongst all others, since the origin of civil society, had completely solved the great problem how to combine the greatest security to property with the greatest freedom of action.[2]

In the debates in the House of Lords in 1718, several of the lords spiritual, notably Bishop Hoadley and Bishop Kennett, were conspicuous in their successful advocacy of the repeal of the Occasional Conformity Act.[3]

Soon after, the policy was adopted of passing annual Bills of Indemnity in favour of those who had accepted office, but had not taken the Sacrament within the required time 'through ignorance of the law, absence, or unavoidable accident.'

The first Indemnity Act was carried in 1727, and, with few exceptions, a similar act was passed every year till the Test Act was repealed in 1828.[4]

The Schism Act, passed in 1714,[5] was repealed in 1718.[6] It placed restrictions on the education of dissenters in their own schools.

It is an important fact that in 1723 the House of Lords concurred in an enactment,[7] passed by the legislature for the express purpose of relieving Jews from the necessity of using the very words 'upon the true faith of a Christian,' which occurred in the Oath of Abjuration prescribed by the statute 1 George I. cap. 13 (1714). Not only so, but the same principle was extended to Jews in the colonies by the statute 13 George II. cap. 7, sect. 3 (1740).

The marginal note is, 'Jews taking oaths may omit some Christian expressions.' 'And whereas the following words are contained in the latter part of the Oath of Abjuration—

[1] See Gibbon's *Decline and Fall of the Roman Empire*, vol. i. chap. iii. p. 127.

[2] The *History of England*, by Lord Mahon (afterwards Earl Stanhope), vol. i. chap. i. pp. 1, 2.

[3] Repealed by the 5 Geo. I. cap. 4. See chap. xvii. *supra*.

[4] Lecky's *History of England*, vol. i. pp. 259, 260.

[5] 12 Ann. st. 2, cap. 7. [6] By the 5 Geo. I. cap. 4. [7] 10 Geo. I. cap. 4.

" upon the true faith of a Christian "—and whereas the people professing the Jewish religion may be thereby prevented from receiving the benefit of this Act, be it enacted, That whenever any person professing the Jewish religion shall present himself to take the said Oath of Abjuration in pursuance of this Act, the said words, " upon the true faith of a Christian," shall be omitted out of the said oath in administering the same to the said person; and the taking and subscribing the said oath by such person professing the Jewish religion, without the words aforesaid, in like manner as Jews were permitted to take the Oath of Abjuration by 10 George I. cap. 4, shall be a sufficient taking of the said oaths.' [1]

Speaking of the earlier part of the reign of King George I., Mr. Lecky [2] says:—

'In general, the services of the peers to the cause of civil and religious liberty, at the time we are considering, were incontestable; and the advantage of an Upper House in this portion of our history can scarcely be questioned by anyone who regards the Revolution and the principles it established as good.'

Against this must, in all candour, be set the Peerage Bill of 1719.[3]

Lord Sunderland had persuaded King George I.—a stranger to British institutions—to renounce his important prerogative of making peers beyond the then existing number of 178, except to the ridiculous extent of six, the power, no doubt, being reserved of creating a new peerage whenever a peerage became extinct. The only possible argument in favour of this bill was derived from the abuse of the prerogative by creating at once twelve peers in the previous reign for the sole end of establishing a majority for the court.[4]

'The Peerage Bill,' says Mr. Lecky,[5] 'the most dangerous

[1] The words 'upon the true faith of a Christian' were first introduced in the reign of James I. See the statutes 3 James I. cap. 4, sect. 15, and 7 James I. cap. 6.

[2] *History of England*, vol. i. chap. ii. p. 186.

[3] Addison warmly supported it in the *Old Whig*.

[4] Hallam's *Constitutional History*, vol. iii. chap. xvi. pp. 238, 239.

[5] *History of England*, vol. i. chap. ii. pp. 185, 186.

constitutional innovation since the Revolution, was inspired by the party influence of the Whigs, and it was intended to prevent the son of George I., who was in opposition to his father, from overthrowing, if he came to the throne, the Whig majority in the Upper House by the creation of Tory peers. Had it been carried it would have made the House of Lords an almost unchangeable body, entirely beyond the control of king, or minister, or Commons. Yet this bill was introduced by the party which is the natural guardian of the popular element in the Constitution.' 'The jealousy of the country gentry was aroused when they saw the portals of the Upper House about to close for ever against them.'

Walpole, in opposing the bill, said :[1] 'Among the Romans the Temple of Fame was placed behind the Temple of Virtue, to denote that there was no coming to the Temple of Fame but through that of Virtue; but if this bill is passed into a law one of the most powerful incentives to virtue would be taken away, since there would be no arriving at honour but through the winding-sheet of an old decrepit lord and the grave of an extinct noble family.'

The influence of the aristocracy in the latter part of the eighteenth century, though almost wholly unsupported by the invidious class privileges which prevailed on the Continent, was enormously great. The peers were the natural heads of the landed interest, which it was one of the main objects of English law to make the predominant power in the country. They were the centre of a traditional popular reverence, unmistakable in its power and sincerity.[2]

Pitt 'desired,' says Lord Rosebery,[3] 'to recruit and refresh the House of Lords by large additions from various classes—from the old landed gentry and the commercial banking aristocracy.' The present Lord Carrington, who has made a most acceptable governor of New South Wales, is a lineal descendant of Mr. Robert Smith, who was raised on the recommendation of Pitt to the peerage, first of Ireland

[1] *Parl. Hist.* vol. vii. 618, 619.
[2] Lecky's *History of England*, vol. vi. chap. xxiii. p. 143.
[3] *Life of Pitt*, chap. xv. p. 276.

and then of Great Britain in 1796-7; Mr. Smith was a banker. Pitt always defended this creation on principle, maintaining that the time had come when, for the sake of the House of Lords, it was desirable that it should not be closed against commercial eminence any more than other well-founded pretensions.

The power of the nobility was supported by great wealth of the kind, which carries with it most social influence, and by a superiority of education and manners which distinguished them, far more than at present, from the average country gentleman.

The two strongest ministries of the reign of George III. were the ministry of North, which lasted for twelve years, and the ministry of Pitt, which lasted for twenty. In the cabinet of 1770 North himself, and Sir Edward Hawke, were the only members who were not in the House of Lords; while Pitt was, at first, the only commoner in the Cabinet of 1783.[1]

The House of Lords concurred with public opinion, and was ready to correct the acts of the other House whenever those acts were considered not sufficiently matured, or when they were not sanctioned by the community.[2]

Mr. Fox's India Bill gave to a board of seven persons (all charters or vested rights notwithstanding) the absolute power to appoint or displace the holders of office in India, and to conduct, as they deemed best, the entire administration of that country. The names of these seven persons were left in blank, to be filled up in committee, and their authority was to endure for four years from the passing of the act, whatever changes of administration might meanwhile ensue![3]

The patronage under the bill cannot, I think, be taken at less than 300,000*l.* a year![4]

'It is, I really think,' said Pitt,[5] 'the boldest and most un-

[1] Lecky's *History of England in the Eighteenth Century*, vol. vi. chap. xxiii. p. 143.

[2] *The History of Civilisation*, by W. A. Mackinnon, F.R.S., M.P., vol. i. chap. xvi. p. 334.

[3] *Life of Pitt*, by Lord Mahon (afterwards Earl Stanhope), vol. i. chap. iv. p. 138.

[4] *Ibid.* 139 n (4).

[5] Writing to the Duke of Rutland, afterwards Lord Privy Seal in his first Cabinet. *Life of Pitt*, by Lord Mahon, vol. i. chap. iv. p. 140.

constitutional measure ever attempted, transferring at one stroke, in spite of all charters and compacts, the immense patronage and influence of the East to Charles Fox, in or out of office.'

Sir Archibald Alison, in his 'History of Europe,' says[1]:—'The sagacious mind of George III. at once perceived that the East India Bill would put Mr. Fox at the head of a powerful empire—an *imperium in imperio*.'

The East India Bill passed its final stages by majorities of 229 to 120,[2] of 217 to 103,[3] of 208 to 102,[4] in the House of Commons.

On December 15, 1783, an adjournment was carried against the ministers by a majority of eight in the House of Lords;[5] and on the 17th the House of Lords rejected the bill by 95 votes against 76.[6]

The Coalition Ministry, who had so overwhelming a majority in the House of Commons, determined not to resign, although their bill had been rejected by the Lords. The king acted with great promptitude. He sent a message to the secretaries of state, ordering them immediately to deliver up their seals of office, and send them by their under-secretaries. The messenger found North and Fox gaily seated at supper with their followers. At first he was not believed. 'The king would not dare to do it,' exclaimed Fox.[7] But the seals were delivered up. Letters of dismissal were written to the other ministers.

The king then sent for Pitt, who was only twenty-three, and entrusted him with the formation of a ministry.

Pitt, who held the office of chancellor of the exchequer, was the only cabinet minister in the House of Commons. He had to bear the whole brunt of the contest with the most formidable opposition ever known in England. The hitherto unrivalled debating powers of Fox, the tried experience of

[1] Vol. vii. chap. li. p. 82.
[2] *Parl. Hist.* vol. xxiii. 1306.
[3] *Ibid.* 1434.
[4] *Ibid.* vol. xxiv. 61.
[5] *Ibid.* 160.
[6] *Ibid.* 196.
[7] *Pitt*, by Lord Rosebery, chap. iii. p. 45.

North, the massive knowledge and varied genius of Burke, the brilliant wit of Sheridan, the legal acumen and forensic talent of Erskine were all arrayed against him. His legal advisers in the Commons were men of very little ability, and, except Dundas and Wilberforce, he had no considerable debater to assist him.[1]

The public, and the public only, enabled Pitt to defeat the powerful phalanx drawn up against him.[2]

'The fallen ministers then made the false step of endeavouring to prevent a dissolution. An address to the king beseeching him to allow them to proceed with the business of the session, without a dissolution, was carried.'[3] The king, in his reply to the address,[4] which the Commons presented to him at St. James's Palace, said:—'I assure you I shall not interrupt your meeting by any exercise of my prerogative, either of prorogation or dissolution.'

'When Fox,' says Mr. Lecky,[5] who is a great admirer of that statesman, and therefore his admissions are all the more valuable, 'in an ill-omened hour, pledged his party to resist dissolution, when he made it the main object of his policy to prevent the question at issue from being brought before the judgment of the constituencies, he made his ultimate success impossible.'

The king, who had refused to make a single peer during the Coalition Government, marked his sentiments by creating four, on the recommendation of Pitt.[6]

On March 1, 1784, Fox moved an address to the king, begging him to dismiss his ministers.[7] On March 4, the king replied that he could not accede to the proposal.[8] On March 24, 1784, the king summoned the Commons to the House of Lords, and apprised them of his determination to

[1] Lecky's *History of England in the Eighteenth Century*, vol. iv. chap. xv. p. 297. [2] Lord Rosebery's *Pitt*, chap. iii. p. 58.
[3] Lecky's *Hist. of England in the Eighteenth Century*, vol. iv. chap. xv. p. 296. [4] See *Parl. Hist.* vol. xxiv. 263, 264.
[5] *History of England in the Eighteenth Century*, vol. iv. chap. xv. p. 303.
[6] *Ibid.* vol. iv. chap. xv. p. 302. See Lord Rosebery's *Pitt*, chap. iii. p. 54. [7] *Parl. Hist.* vol. xxiv. 687. [8] *Ibid.* 717.

call a new parliament;[1] and on the following day the parliament was actually dissolved. The result of a struggle, waged under these conditions, could hardly be doubtful. Pitt met the parliament of 1784 at the head of a majority, which made him the most powerful minister ever known in the parliamentary history of England.[2]

'The king and Pitt,' says Lord Rosebery,[3] 'were supported on the tidal wave of one of those great convulsions of feeling which in Great Britain relieve and express pent-up national sentiment, and which in other nations produce revolutions.' 'The number of "Foxe's Martyrs"—of Fox's followers, who had earned that nickname by losing their seats—was 160!'

Long before the slave trade was abolished the lords spiritual expressed in the Upper House warm sympathy with the movement for its abolition.

In the debate in 1792,[4] for example, on 'the present state of the trade to Africa, and particularly the trade in slaves,' the Bishop of London said, 'he thought himself, from what he already knew, sufficiently warranted in declaring that the slave trade ought to be abolished, and when noble lords reflected that every year, nay, every month, they delayed the abolition, they were condemning thousands of their fellow-creatures to captivity and death, they would not delay, for one moment, coming to resolutions on the subject. Independent of all that had been said of the treatment of those unfortunate wretches in the West Indies, he was convinced that the method of procuring them from Africa was wicked and abominable in the extreme. The slave trade was a trade unfit to be carried on, or protected by any nation professing religion, morality, or even common justice; and to talk of regulation, or reform, in its practice was an idle waste of words, since the trade was incapable of correction, and therefore ought to be abolished.'

The Bishop of St. David's declared that the slave trade could not be countervailed by any principles of policy or

[1] *Parl. Hist.* vol. xxiv. 774.
[2] Lecky's *Hist. of England*, vol. iv. p. 311.
[3] *Pitt*, by Lord Rosebery, chap. iii. pp. 56, 58.
[4] May 8; *Parl. Hist.* vol. xxix. 1350, 1352, 1355.

expedience. He sensibly felt that considerations of moral duty must ever supersede objects of mere policy, and in the case of the slave trade the cause of morality, religion 'and justice forcibly opposed itself to its continuance.'

The Catholic Relief Bill of 1791 removed some of the anomalies of the position of Roman Catholics in England. The Anglican bishops fully supported it, and Bishop Horsley (the Bishop of St. David's) induced the House of Lords to change the form of the oath, in order to meet the objections of the Vicar Apostolic.[1]

Although no doubt, as Mr. Lecky shows,[2] the massacre of English and Irish Protestants by the Irish rebels in 1641 has been greatly exaggerated by the English writers, enough remains of the horrible tale to show that the Protestant religion in Ireland was 'in imminent danger of annihilation;' enough, also, to confirm the British Parliament (inflamed by the persecutions of Protestants abroad[3]) in their resolve to

[1] Lecky's *History of England*, vol. v. chap. xix. p. 184; *Parl. Hist.* vol. xxix. 678.

[2] *History of England*, vol. ii. chap. vi. pp. 127, 128, &c.

[3] In 1724 a new law was made against the Protestants of France, by one clause of which all who assembled for the exercise of Protestant worship, even in their own homes, became liable to life-long servitude in the galleys and to the confiscation of all their goods. Another clause condemned to death any Protestant minister, exercising any religious function whatever, and to the galleys any witness who failed to denounce him. A third clause enjoined all physicians to inform the priest of the condition of every dying patient, in order that, whether he desired it or not, a Roman Catholic priest should be present at his deathbed. A fourth clause rendered any Protestant who, by his religious exhortations, strengthened a dying relative in his faith, liable to the galleys and to confiscation of his goods. Even prior to this law (1717), an assembly of 74 Protestants being surprised at Andure, the men were sent to the galleys, the women to prison. After this law a Protestant pastor was hanged at Montpellier, and (1745, 1746) 277 Protestants in Dauphiny were condemned to the galleys.

Every considerable town in England and in the Irish counties of Antrim and Down, and also in Holland and Protestant Germany, contained a colony of Frenchmen, who, after the Revocation of the Edict of Nantes, had been driven from their homes by a persecution of extreme ferocity.

A long course of the most atrocious cruelties had kindled the flame of rebellion in the Cevennes.

In the course of 1732–4, 17,000 German Protestants were compelled, by the persecution of the Archbishop of Salzburg, to abandon their homes and seek a refuge in Prussia and Georgia. *Ibid.* vol. i. 269, 270.

'prevent the growth of popery' in Ireland. In relation to the time when the penal laws were in force in Ireland, Voltaire, an impartial witness, speaks thus, however, of that country in his 'Essai sur les Mœurs'[1]:—

'Dans le dix-huitième siècle l'agriculture, les manufactures, les arts, les sciences—tout s'y est perfectionné; et l'Irlande, quoique subjuguée, est devenue une des plus florissantes provinces de l'Europe.'

Commenting on this language, the late Mr. Froude observes[2]:—'So Ireland appeared to the keenest eye in Europe when it is the fashion to say that she was groaning under the hatefullest tyranny. The description was too favourable, yet it was relatively correct. The Irish are a military people. They are admirable as soldiers and police. They obey authority, and prosper under it. They run wild when left to their own wills. An industrious people thrive best when free. A fighting people require to be officered, and when authority is firm and just, are uniformly loyal.'

The Earl of Rosebery rightly calls[3] the measures passed by the Irish parliament in 1792 and 1793[4] 'the emancipation of the Irish Roman Catholics'—'measures which admitted the Roman Catholic peasantry to the parliamentary suffrage and to juries, and relieved them from all property disabilities.' 'It imported little to them whether or not a number of gentry of their own persuasion went up to Dublin to be bought and sold at the Castle.'

'The long agitation of O'Connell,' says Mr. Lecky,[5] 'has given the admission of Roman Catholics into parliament an altogether factitious magnitude in the public mind. In real importance it was immeasurably inferior to the Irish Act of

The persecution, fomented in 1724 by the Jesuits at Thorn, in Poland, aroused the indignation of all Protestant Europe.

Through the Inquisition in Spain and Portugal thousands of Jews and Protestants were burnt alive at the *auto-da-fés*, in the royal presence.

[1] Chap. 50.

[2] *Earl of Beaconsfield*, by J. A. Froude, in *The Prime Ministers of Queen Victoria*, chap. xiv. p. 208.

[3] *Pitt*, by Lord Rosebery, chap. iii. pp. 173, 182.

[4] Irish Statutes, 32 Geo. III. cap. 21; 33 Geo. III. cap. 21. (Relief Acts.)

[5] *History of England*, vol. vi. chap. xxv. p. 572.

1793, which gave the great bulk of the Irish Catholics the franchise. Catholic constituencies have never found any difficulty in obtaining Protestants to act as their instruments.'

Few things in Irish parliamentary history are more remarkable than the facility with which this great measure was carried, though it was, in all its aspects, thoroughly debated. It passed its second reading in the Irish House of Commons with only a single negative. It was committed with only three negatives, and in the critical divisions on its clauses the majorities were at least two to one.[1]

In the Irish House of Lords the bill passed with little open opposition. Dickson, the Bishop of Down, and Law, the Bishop of Elphin, were conspicuous among the advocates of the measure.[2]

A measure was passed by the Imperial Parliament in 1824, at the instance of Mr. (afterwards Lord) Plunket, which made it lawful for the rector, vicar, or incumbent of any parish in Ireland to grant permission to any minister of a non-Established communion, on the death of a member of his congregation, to perform a burial service according to the rites of his communion at the grave. If the permission were withheld, the cause was to be stated in writing, and one copy to be delivered to the applicant, the other to be forwarded to the bishop of the diocese for transmission to the Lord-Lieutenant.[3]

In 1824,[4] and again, by a larger majority, in 1826,[5] the House of Commons refused leave to the Hon. George Lamb to introduce a bill to 'allow persons prosecuted for felony to make their defence by counsel, as in cases of misdemeanour.'

[1] Lecky's *History of England*, vol. vi. chap. xxv. p. 587. [2] *Ibid.* 588.

[3] 5 Geo. IV. cap. 25, sects. 2–5. See the speech of Mr. Plunket (Hansard's *Parl. Debates*, new series, vol. x. 1453–1465), and the debate in the Lords, *ibid.* vol. xi. 174–178. In 1868 (twelve years before the English Burials Act) a Roman Catholic member, Mr. Monsell (afterwards Lord Emly) succeeded in carrying his Burials (Ireland Bill), which amended Lord Plunket's act of 1824, and gave power (on serving the incumbent of the parish with twenty-four hours' notice) to any priest, or minister of a non-Established denomination, to perform at a specified time (which was not to clash with the church services) a Burial service at the grave of a deceased member of his flock. 31 & 32 Vict. cap. 103.

[4] 'Ayes' 50, 'Noes' 80; majority 30; Hansard's *Parl. Debates*, new series, vol. xi. 180–220.

[5] 'Ayes' 36, 'Noes' 105; majority 69; *ibid.* vol. xv. 589–633.

'Discouraged,' Mr. Walpole says,[1] 'by the defeat, the reformers abstained from further exertions in this direction for nine years.'

The satisfactory settlement of this question was ultimately due to the Lords.[2]

Church and State were regarded by our ancestors as identical; and to enjoy the privileges of full citizenship it was considered essential that the subject claiming it should conform to the Church as by law established. A similar rule prevails in Sweden at the present day. To enjoy the full rights of a citizen, the subject must have been confirmed by a pastor of the State religion—the Lutheran Church. There the matter presents no difficulty, because only 1 per cent. of the nation are Nonconformists and Roman Catholics. Church and State in Sweden are practically identical. To enable a subject to hold municipal office or to sit and vote in parliament it was necessary in this country, prior to 1828, that he should take the sacrament of the Lord's Supper in accordance with the rites of the Established Church—the Church of England—this being the most solemn rite of the national faith.

In 1828 this principle was given up, as far as English Nonconformists were concerned. Instead of the State being co-extensive with the Church, it became co-extensive with the Protestant faith. In 1829 this principle was given up, and Roman Catholics were admitted to the full rights of citizenship. The State then became co-extensive with the Christian population. It is marvellous the tenacity with which many great and good men—men like the late Earl of Shaftesbury—clung to this sole remaining principle. But in 1858 it too was given up, and the State and the nation, irrespective of religious denomination, became co-extensive for the first time since the Restoration.

It was sought to safeguard the National Church by imposing oaths on the persons newly admitted, from time to time, to the full rights of citizenship, declaring that they would

[1] *History of England*, vol. iv. chap. xvii. p. 88.
[2] See chap. xix. *infra*.

not use these new privileges to its prejudice. But, while the widening process has steadily advanced, the guarantees of neutrality have proved utterly unavailing. The Irish Church went down before the combination of the newly admitted citizens against it, notwithstanding all the pledges given to maintain it; and if the Church in Wales goes down in like manner, as a preliminary to the sacrifice of the National Churches of England and Scotland, it will only be a further justification of the fears entertained by our ancestors, to which practical effect was given, prior to 1828, by parliament and especially by the House of Lords. It was due to the same instinct of self-preservation, which excluded Roman Catholics from the throne, that the full rights of citizenship were confined by the legislature to churchmen. The late Earl of Derby said in 1858, 'that all civil rights, all securities for property are the birthright of the people of this country, but the privilege of sitting in parliament and filling public employments is not an inherent right, to which every individual is entitled, but a right conferred by the legislature, and with respect to which the legislature has a perfect right to attach restrictions and conditions.'[1]

I desire to call attention to the attitude of the lords spiritual on the Bill to repeal the Corporation and Test Acts, 1828. The bill was carried against the government in the House of Commons by a majority of 44, and sent up to the House of Lords.

The Archbishop of York said:[2]—'I have, my Lords, no hesitation in declaring that I feel bound, on every principle, to give my vote for the repeal of an act which has, I fear, led in too many instances to the profanation of the most sacred ordinance of our religion. My lords, religious tests, imposed for political purposes, must, in themselves, be always liable, more or less, to endanger religious sincerity.' With regard to the Archbishop of Canterbury he said: 'My most reverend friend, the primate of our Church, whose sentiments on this subject I have the happiness to know accord entirely

[1] Hansard's *Parl. Debates*, third series, vol. cl. 1161.
[2] *Ibid.* new series, vol. xviii. 1482.

with my own, is unhappily prevented by severe indisposition from attending in his place this day.'

The Bishop of Lincoln said:—'Notwithstanding all the ingenuity which has been exerted—and never was greater ingenuity exerted than in defence of the Sacramental Test—I feel that the mind can never be thoroughly reconciled to the idea of making a participation in one of the most solemn ordinances of religion a passport to secular office, or of holding out a worldly inducement to the performance of an act which ought to originate in purely religious feeling.'[1]

The Bishop of Durham said:—'It is no longer a decisive proof of Church membership, nor, indeed, was it ever entirely so, since there were many conscientious dissenters, in former times, who did not object to receive the sacrament in our Church. We know, also, that it is continually taken (if at all) merely as a qualification for office, and, not unfrequently, it is to be feared, under circumstances that indicate even an intentional desecration of it. Its continuance, therefore, certainly may give occasion to scandal and offence, and I believe a great majority of our clergy feel this so strongly as to be far from disinclined to abandon it, and to provide some less exceptionable substitute in its stead.'[2]

The Bishop of Chester delivered a long and eloquent speech in support of the bill, in the course of which he said:—

'The effect of the Sacramental Test has been to alienate more completely from the Church the most conscientious of the dissenters. That conformity, at which they did not scruple, as an evidence of Christian charity, they revolted from, as a means of obtaining office. I have no fear lest the religious character of this country should be impaired by the measure now under consideration. This was a Christian country before these acts were passed, and will be so when they are done away. Its constitution is essentially Christian, not in virtue of the Test Acts, but as having Christianity taken for granted, and interwoven in its whole texture, and made, from the very first, part and parcel of the law of the land.'[3]

[1] Hansard's *Parl. Debates*, new series, vol. xviii. 1485–1491.
[2] *Ibid.* 1491–1497.
[3] *Ibid.* 1508–1517.

Lord Goderich awarded the episcopal bench no more praise than was their due when he said: 'The sentiments which your lordships have heard from several right reverend prelates do no less honour to themselves than to the assembly to which they were addressed, and the Church to which they belong.'[1]

'The measure,' says Lord Farnborough (Sir Thomas Erskine May), 'was received with gratitude by dissenters, and the grace of the concession was enhanced by the liberality of the bishops and the candour and moderation of the leading statesmen, who had originally opposed it.[2] The liberal policy of parliament was fully supported by public opinion, which had undergone a complete revulsion on this question.'

It certainly was not the intention of the House of Lords, when inserting the words 'upon the true faith of a Christian,' in the new declaration prescribed by the bill for the repeal of the Test and Corporation Acts, to exclude Jews from holding municipal offices.

The Bishop of Llandaff said:[3]—'I think it would be proper to call on those taking the test to declare, on the faith of Christians, that they would not endeavour, by the exercise of any power with which their respective offices might invest them, to interfere with the rights and immunities of the Church of England.'

Earl Grey was about the last person to sanction the introduction of expressions calculated to lessen the boon which the legislature was conferring; yet he approved of the insertion of the words:—

'If some further proof of the candidate for office being a Christian were necessary, it would be better, perhaps, to add, as a right reverend prelate[4] had proposed, the words "on the true faith of a Christian," or words to that effect.'[5]

The amendment was carried without a division. It is perfectly clear that the object was to use a form of declara-

[1] Hansard's *Parl. Debates*, new series, vol. xviii. 1505.
[2] The reference is to the Duke of Wellington and Sir Robert Peel. May's *Constitutional History of England*, vol. ii. p. 391.
[3] Hansard's *Parl. Debates*, new series, vol. xviii. 1586.
[4] The Bishop of Llandaff.
[5] Hansard's *Parl. Debates*, new series, vol. xviii. 1608.

tion which would be binding on dissenters, whom the bill was intended to relieve from the Sacramental Test, and no wider phrase suggested itself than that of 'Christian,' an expression recognised by dissenters quite as much as by members of the Church of England. Jews were never named in the whole course of the debate.[1]

Fifty Years of the House of Lords

Before passing from the era of 'the Georges,' it becomes necessary for me to notice a brochure, entitled 'Fifty Years of the House of Lords,' mentioned by Mr. Gladstone in his last speech as Prime Minister in the House of Commons. It will be remembered that Mr. Gladstone was annoyed at having to accept, on March 1, 1894, two amendments, inserted in the Parochial Councils Bill by the House of Lords. After denouncing these amendments, he continued:[2]—'As long ago as 1880 a small work was published—small, but of an importance far out of proportion to its size—called "Fifty Years of the House of Lords." Published under the auspices, I believe, of a member of this House of great authority in a matter of this sort, it left upon the mind, I think, of every gentleman associated with the Liberal party the painful but firm conviction that the case of the House of Lords for those fifty years, in the exercise of its legislative functions, was a case, upon the whole, grievously unsatisfactory.' This 'small work' has been considered so 'important,' that it has been 'reprinted with notes,' since Mr. Gladstone's speech, by Mr. Stead.

The 'genesis' of this one-sided and dangerous tract is disclosed by itself[3]:—

'The late Mr. F. Bowen-Graves, in his admirable papers in the *Fortnightly Review* on "Forty Years of the House of Lords,"[4] suggested the present retrospect.'

[1] Hansard's *Parl. Debates*, new series, vol. xviii. 1585–1609, and see the exemption of Jews from this very phrase in the previous century, *supra*.

[2] Reported in the *Times* of Friday, March 2, 1894. [3] P. 55.

[4] *Fortnightly Review* (edited by John Morley), No. LXXIII. N.S. (No. CX. O.S.), January 1873, pp. 89–108; No. LXXIV. (No. CXI. O.S.) N.S. February 1873, pp. 231–250.

The tract itself was taken from the *Pall Mall Gazette*, 1881.

Prejudiced as the author of 'Fifty Years of the House of Lords' undoubtedly is, he is free from the crass bigotry and intolerance of Mr. Bowen-Graves. The House of Lords, according to Mr. Bowen-Graves, is 'hopelessly and irremediably bad'; 'its existence is an unmixed evil to society'; it will be 'an advantage, at all hazards and at any price, to be once and for ever rid of it'; 'the end will speedily be here.' Mr. Bowen-Graves is a false prophet. These venomous mouthings were written twenty-one years ago; and the House of Lords is stronger now than it was then.

Speaking in 1854, Mr. Gladstone said [1]:— 'Sir, I do not think that it was by violence or by overawing the House of Lords that the good measures of the last *twenty* years were carried. I believe that it was by the judicious forbearance of this House, by its good feeling, by its watching times and seasons, by its sedulous attention to every opportunity that prudence dictated.'

Taking a wider retrospect, Mr. Gladstone, when opposing Mr. Labouchere's motion,[2] levelled against the House of Lords, in 1884, arrived at conclusions,[3] which it may be useful to place before my readers at this point:—

'I must, as a candid man, looking at this question for a practical purpose, consider this—that notwithstanding all this action of the House of Lords, of which we are inclined to complain, we have had a period of *fifty* years such as has never been known in the entire history of the country—I may almost say, in the entire history of the modern world—for the vast amount of practical legislation which it has introduced upon the statute-book of this land, and from which we are, from day to day, reaping the benefit.'

Surely people might remember that the long list of Liberal measures which have been passed during the present reign, and of which Liberals are so proud, have all passed the House of Lords, and run the gauntlet of that Conservative majority that Lord Rosebery regards as so great an evil.[4]

[1] Hansard's *Parl. Debates*, third series, vol. cxxxiv. 554.
[2] See *ibid.* vol. ccxciv. 141–165. [3] *Ibid.* 262.
[4] *Subjects of the Day* (No. 4, February 1891); *The House of Lords*, part v., by the Earl of Pembroke, p. 51.

The only impartiality which I can find in the 'small work' is that its author impartially (!) blames the House of Lords for declining to assent to exceptional legislation for Ireland, and also for declining to assimilate the law of Ireland to that of England. Clearly, both principles cannot be right!

The bulk of the legislation applied, or sought to be applied, to Ireland during the past sixty years has been exceptional legislation. The familiar phrases are 'This act shall apply to Ireland only,' or 'This act shall not apply to England or Scotland.' How can we accept the assertion that this is legislation, 'extending to the Irish the rights and privileges enjoyed by their fellow-subjects in England and Scotland'?[1]

One great difficulty in dealing with the 'small work' is the total absence of any voucher for any of its statements. There is not a single foot-note, giving references to authorities for these statements, from beginning to end! One is obliged to plod wearily through the pages of 'Hansard,' to dig out the obscure bills which it flings in the face of the House of Lords.

An able Gladstonian writer,[2] to whom I have had occasion frequently to refer, holds up to contempt the author of 'Fifty Years of the House of Lords' as 'giving colourable support' to the 'contention,' that 'the opponents of the Hereditary Chamber are shallow and ignorant persons, who pervert fact to secure their revolutionary purposes.' He illustrates this by a 'statement,' which, he says, 'diverges from the facts so considerably that an opponent could hardly be censured severely if he denounced it as an absolute falsification of them.'

Of the seven chapters of this smart but spiteful little work no fewer than three (comprising about half of the whole work) are devoted to the grievances of Ireland. This, no doubt, is the reason why it possessed such fascination for Mr. Gladstone.

But the author is not content with confining himself to 'fifty years' prior to 1880; he goes, he admits,[3] 'outside the half-century selected for review'; and this not in one chapter

[1] *Fifty Years of the House of Lords*, p. 15.

[2] Mr. T. A. Spalding, in *The House of Lords an Anomaly and a Danger* (published by the Eighty Club), p. 7.

[3] P. 23.

only, but in several. Nay, he cites,[1] with approbation, Daniel O'Connell's 'conundrum' to the House of Commons:—'Why are the Irish discontented?' 'Because for seven hundred years England has governed them by a faction and for a faction.' The author of the 'small work' darkly hints that 'England' means the House of Lords! To prove this, however, would 'far exceed the limits of an article'; and so, with great moderation, he commences with the reign of King George IV.!

'The House of Lords,' says the author of 'Fifty Years' of that Assembly,[2] 'passed the Test and Corporation Acts with reluctance before the Reform Act.' The Corporations Act was passed in 1661. The Test Act was passed in 1673. This was 'before the Reform Act' with a vengeance! But to an author who cites with approval O'Connell's charge of 'seven hundred years' of misgovernment a few centuries here or there make no difference! We must, however, I suppose, give the author credit for meaning: 'The House of Lords passed [the Repeal of] the Test and Corporation Acts with reluctance, before the Reform Act.' But if he means this, he states what is incorrect, as anyone can see for himself who peruses the pages of Hansard.

'Catholic Emancipation, regarded by Mr. Pitt as one of the essential conditions of the Union, was postponed till concession had lost its virtue. The responsibility for this, no doubt, must be shared with the House of Commons.'[3]

The reason why Catholic Emancipation did not immediately follow the passing of the Act of Union was the opposition, neither of Lords or Commons, but of the king. George III. regarded the sanctioning of its principles as a violation of his coronation oath,[4] and I fail to see how Mr. Pitt or his successors could have carried it over the royal veto, which, undoubtedly, the king had a right to exercise, and would have exercised. The Duke of Wellington and Sir Robert Peel took

[1] P. 16. [2] P. 40.

[3] *Fifty Years of the House of Lords*, pp. 23, 24.

[4] 'The Catholic leaders did not know that the king had already told his ministers that he would consider his consent to Catholic emancipation a breach of his coronation oath.' Lecky's *History of England*, vol. viii. chap. xxxii. p. 509; Stanhope's *Life of Pitt*, iii. 272.

the precaution of obtaining George IV.'s consent before introducing their Catholic Relief Bill in 1829.

The author goes back to the Union,[1] but takes very good care not to go back to the years 1792 and 1793, when the Irish House of Lords passed, almost unanimously, measures which, as the Earl of Rosebery points out,[2] 'admitted the Roman Catholic peasantry to the parliamentary suffrage, and to juries, and relieved them from all property disabilities.'[3]

'The long agitation of O'Connell,' says Mr. Lecky,[4] 'has given the admission of Catholics into parliament an altogether factitious magnitude. In real importance it was immeasurably inferior to the Irish Act of 1793. Catholic constituencies have never found any difficulty in obtaining Protestants to act as their instruments.'

It must be remembered that in 1819 there was a majority of two in the House of Commons against Catholic emancipation; and as recently as 1827 Catholic emancipation had been negatived in the House of Commons by a majority of four. Sir Francis Burdett brought forward on March 5, 1827, the following motion:—

'That this House is deeply impressed with the expediency of taking into consideration the laws imposing civil disabilities on His Majesty's Roman Catholic subjects, with a view to their relief.'

After a debate lasting two days, 272 members voted for the motion and 276 against it, notwithstanding an eloquent speech from Mr. Canning (who next month became prime minister) in its favour.[5]

The minority of four was changed to a majority of six in 1828, 272 to 266.[6] The form of the motion was somewhat changed, and contained specious words about Catholic eman-

[1] Pp. 23–30.

[2] 'It has, indeed, always been a matter of comparative indifference to the Catholic peasantry whether they were led by Protestants or Catholics.' *Pitt*, chap. xi. pp. 173, 182.

[3] *Pitt*, by the Earl of Rosebery, chap. xi. pp. 173, 182.

[4] *History of England*, vol. vi. chap. xxi. p. 572.

[5] Hansard's *Parl. Debates*, vol. xvi. 825, 849, 993, 1009.

[6] *Ibid.* vol. xix. 375, 419, 675.

cipation 'conducing to the stability of the Protestant Establishment,' intended to catch votes. To this may have been due the difference of ten votes.

Catholic emancipation was, however, the natural complement of the Repeal of the Test and Corporation Acts in that year.

The Corporation Act was directed against Protestant dissenters, but the Test Act was aimed against the Roman Catholics.[1]

Lord Eldon, the great opponent of Roman Catholic claims, wrote to Lady Bankes in April, 1828:—

'Sooner or later—perhaps in this very year, almost certainly in the next—the concessions to the dissenters must be followed by the like concessions to the Roman Catholics. That seems unavoidable, though at present the policy is to conceal that additional purpose.'[2]

O'Connell, indeed, and 'the Catholic Association' had the object in view, which Mr. Parnell and the Land League in after years kept steadily before them, that of making the government of Ireland impossible unless their views were adopted by parliament. They, therefore, 'did their utmost to rouse Ireland into almost open rebellion,[3] but the attitude of the ministers, as disclosed in the speech from the throne, was one of the utmost firmness—advocating the suppression of 'the Catholic Association' as a necessary preliminary to any concession of Roman Catholic claims, and the bill which Mr. Peel, five days after the meeting of parliament, introduced for its suppression received the royal assent before he moved the House of Commons to take into consideration Roman Catholic claims.[4] This did not look like legislation in a panic; vindicate law and order first, and then redress grievances, was a statesmanlike way of setting to work.

'When Roman Catholic emancipation was wrung from the House of Lords in 1829, the concession was only made on

[1] Lecky's *History of England*, vol. i. chap. ii. p. 256.
[2] Twiss's *Life of Lord Chancellor Eldon*, vol. iii. chap. li. pp. 37, 38.
[3] *Annual Register* for 1829, p. 1. [4] *Ibid.* p. 12.

condition that the forty-shilling freeholders should be disfranchised.'[1]

This is an utterly misleading statement. So far from Catholic emancipation being '*wrung* from the House of Lords,' it passed that House by triumphant majorities—the second reading by 217 votes to 112, majority 105; the third reading by 213 votes to 109, majority 104![2] The result would have been very different if anyone had attempted to coerce the Peers.

Then, again, the plain meaning of the author's words is that the Peers made it a condition that the forty-shilling freeholders should be disfranchised. Nothing of the sort. This condition was accepted by the House of Commons before the bill was sent up to the Lords! It formed part of 'the safeguards of the Protestant constitution,'[3] as explained by Mr. Peel in introducing the bill, and it was accepted by Mr. Brougham, on behalf of the Liberals, as 'the price that he would most willingly pay to obtain this inestimable good.'[4]

Why should this jaundiced critic drag in the House of Lords?

The act for the abolition of the Irish forty-shilling freehold franchise is the 10 Geo. IV. cap. 8; it received the royal assent on April 13, 1829. 'Even in Ireland no loud expression of opinion was heard against it.'[5]

Lord John Russell, in 1850, described this franchise as 'the greatest caricature and most savage abuse of the representative system that could well be imagined.'[6]

It was the House of Commons which first opposed Jewish emancipation. The question was raised in the House of Commons the very year after Catholic emancipation was carried. A number of petitions, including one from the merchants, bankers, traders, and other inhabitants of the city

[1] *Fifty Years of the House of Lords*, p. 16.
[2] Hansard's *Parl. Debates*, new series, vol. xxi. 394, 694.
[3] *Annual Register* for 1829, p. 23.
[4] This announcement was received by the House of Commons with 'loud cheers.' Hansard's *Parl. Debates*, new series, vol. xx. 836. See Walpole's *History of England*, vol. ii. chap. x. pp. 508, 509.
[5] *Annual Register* for 1829, p. 104.
[6] Hansard's *Parl. Debates*, third series, vol. cix. 269, 270.

of London, presented by Mr. A. Baring, were brought under the notice of the House of Commons in 1830, praying for the emancipation of the Jews.[1]

Mr. Robert Grant moved the second reading of his bill 'for the removal of Jewish disabilities.' Lord John Russell and Mr. Huskisson amongst others supported the bill, but it was rejected by a substantial majority, 63—the numbers being 'Ayes' 165, 'Noes' 288.[2]

The very first bill that the author of 'Fifty Years of the House of Lords' mentions[3] is a bill which the House of Lords—rejected? No—read a second time—without a division, thereby approving of its principle, on June 18, 1830, on the motion of the Marquess of Downshire. This bill was called 'The Draining of Bogs (Ireland) Bill.' On June 10, 1830, when the Marquess of Downshire moved that the bill be committed, the prime minister, the Duke of Wellington, pointed out that it conferred greater powers on the commissioners to be appointed under it than those possessed by grand juries in Ireland and enclosure commissioners in England. The bill was referred to a select committee; but the author, while mentioning this, neglects to state that on June 26, 1830, before the select committee reported, King George IV. died, and King William IV. ascended the throne, which entirely altered 'the state of business.' On July 1—that is to say, five days after the death of the king—the select committee reported, and the report was presented by the Marquess of Downshire. There was 'little chance,' they said, 'of getting the bill through in the present session,' 'owing to the state of business'; and they were right, for parliament was prorogued by the new king on the 23rd of the same month, and it never met again. On the following day it was dissolved by proclamation.[4]

'But,' says the author, 'the Peers found time to pass through all its stages a Coercion Bill, which was not read a second time till July 9, eight days after the report of the select committee.' I suppose the 'Arms (Ireland) Bill' is referred to.

[1] Hansard's *Parl. Debates*, new series, vol. xxiv. 769.
[2] *Ibid.* 784–814. [3] P. 2.
[4] See Hansard's *Parl. Debates*, new series, vol. xxv. 85, 178, 838, 1313.

But the author has omitted to mention that the prime minister (the Duke of Wellington) stated[1] that 'the bill was a mere continuation of the act of 1797, and intended to be in force for but one year,' and that in the House of Commons Daniel O'Connell withdrew his opposition to the bill on account of the insertion of an amendment that search for arms should only be made on sworn information, and Mr. Doherty stated that 'if the bill were not passed, Ireland would be inundated with arms.'[2] In the one case the bill was a mere temporary renewal of an existing act; in the other a new and permanent alteration of the law—and the House of Lords was bound to make the measure a workable one.

CHAPTER XIX

THE HOUSE OF HANOVER.—WILLIAM IV

Fifty Years of the House of Lords

THE 'Fifty Years of the House of Lords' include, of course, the reign of King William IV.—a reign, no doubt, memorable in the annals of legislation.

The author of that work carefully avoids, however, alluding to 'the Truck Acts,' the great achievement of the unreformed parliament in this reign.

The Truck Acts

The system of paying wages in goods instead of money, technically known as 'the Truck System,' was condemned by the legislature more than four hundred years ago.[3]

Subsequently, in the reigns of Queen Elizabeth, Queen Anne, and the Georges, penalties were imposed upon employers of labour 'oppressing' their labourers[4] by the 'pernicious practice'[5] of paying wages in goods in a great variety of trades. The evil of paying wages in goods instead of money grew to such a height, however, that bills were introduced in

[1] Hansard's *Parl. Debates*, new series, vol. xxv. 1116. [2] *Ibid.* 915.
[3] See 4 Edw. IV. cap. 1, sect. 5 (A.D. 1464).
[4] 1 Ann. statute 2, cap. 18, sect. 3. [5] 57 Geo. III. cap. 115.

the House of Commons to put an end to the 'Truck System' in the year 1830. Mr. Hume, the well-known Radical member, moved that the bill be read a second time that day six months. 'If the workman,' he said, 'did not like his employer's service, let him give it up.' 'He was sure that the trade of the country would not flourish under such a system as this bill would create.' Mr. Robinson, the Liberal member for Worcester, who seconded Mr. Hume's amendment, said that, 'to put an end to the Truck System would, in many cases, put an end to the employment of workmen altogether.' Mr. Hume's motion was defeated by a large majority.[1] When the bill next came before the House, Mr. Warburton, the Radical member for Bridport, by dividing on a trivial amendment, revealed the fact that there were not forty members present, and so got rid of the bill for that night.[2] Mr. Gordon, the Radical member for Cricklade, suggested that the bill should be given up at once! Mr. Daniel O'Connell made the ridiculous assertion that 'the bill would be destructive to Ireland!'[3] After several postponements, Mr. Robinson said the bill would, if it became law, 'inflict a great and lasting injury both on labourers and their employers.' The Right Hon. J. C. Herries, a member of the Tory Government, said that 'the Government approved of the object and principle of the bill.' Owing to the obstruction of the Radicals, the chairman had to 'report progress';[4] and, shortly after, parliament was dissolved, and the victory of the Radical obstructives was complete.

Next session Mr. Hume moved for a committee of inquiry, in order to shelve the bill. This was negatived, and the motion for the introduction of the bill was carried by 167 votes to 27.[5] On the House resolving itself into committee on the bill on April 12, 1831, Mr. Hume moved that 'the chairman do leave the chair.' Mr. Western, the Liberal member for Essex, Mr. Tennant, the Liberal member for St. Albans, and Mr. James Morrison, the Liberal member for St. Ives, condemned the bill in the strongest terms. Mr. Gordon, the Liberal

[1] See Hansard's *Parl. Debates*, new series, vol. xxv. 595–612.
[2] *Ibid.* 872–882. [3] *Ibid.* 946, 947. [4] *Ibid.* 954–988.
[5] *Ibid.* third series, vol. i. 1133–1182.

member for Cricklade, said that, 'of all the absurd pieces of legislation that had ever been introduced into the British legislature, this was, in his opinion, the most absurd.' The late Earl of Harrowby—then Lord Sandon—Conservative member for Tiverton, said that the working classes 'felt the slavery in which they were entangled, and they came to that House for relief.' Mr. Hume's amendment was lost. The bill passed through committee, and was reported, as amended, to the House.[1] Ten days later, however, parliament was prorogued, and the bill shared the fate of its predecessor.

At length, on June 28, 1831, Lord Wharncliffe, who had been raised to the peerage in 1826 by the Tory government of the day, introduced the measure into the House of Lords, saying:—'I am glad that your lordships have power to originate propositions of this kind, while the House of Commons is occupied in other, and perhaps more important, business.'[2]

On July 7th Lord Wharncliffe moved the second reading.[3] 'He liked to see the workman fairly independent of his master, receiving his wages in money, and buying at any shop he pleased to select that which he really wanted, instead of having thrust upon him more bacon and flour than he had occasion for, and which he must necessarily dispose of at great disadvantage. The articles which were given to him in lieu of wages were frequently things which were perfectly useless to him—so various and ill-assorted that they reminded him of the cargoes which were sent out some years ago to Buenos Ayres when the rage for speculation existed, and individuals sent skates and warming-pans to that torrid region! The legislature had a right to say, "Here is current coin of the realm; we insist on your paying your workmen in that medium."'

The bill was read a second time[4] and passed through committee, three weeks later, without a division.[5]

When the bill was sent down to the Commons, the Radicals opposed it.[6] Mr. Hume moved that the House resolve itself

[1] See Hansard's *Parl. Debates*, third series, vol. iii. 1256-9.
[2] *Ibid.* vol. iv. 407. The allusion was to the Reform Bill.
[3] *Ibid.* 922-926. [4] *Ibid.* 930. [5] *Ibid.* vol. v. 464-466.
[6] *Ibid.* vol. vi. 1357-1364.

into committee on the bill that day six months. 'He considered the bill a monstrous "innovation"' (this from a Radical!). 'Such laws as this were not adapted for an enlightened period like the present.' Mr. Daniel O'Connell declared that 'the bill, in the present state of Ireland, might do great evil.' Mr. Hume's amendment was rejected by a majority of three to one.

Mr. Hume divided the House on the third reading of the bill, but only four members supported him now! The bill was read a third time, and passed,[1] and on October 15, 1831, received the royal assent.[2]

The Radicals subsequently changed their views. Mr. Mundella, lately a member of Lord Rosebery's cabinet, said, in 1870:—'When we remember that it was only in 1831 that the Truck Acts were first passed, and see all the good which they have done, I am quite sure I will not call in vain on the House to extend and perfect their beneficent action. It is difficult to realise that we are living in the same country, so great is the change that has taken place, the "truck system" being entirely unknown now in Lancashire, where it, at one time, overshadowed the prosperity of the working classes.'[3]

The Reform Act of 1832, 2 *Will. IV. cap.* 45

The Reform Bill was regarded by many moderate men as likely to upset the balance of the constitution, as defined by Edmund Burke.

'There were men of the highest intellect and genius,' says the Duke of Argyll, 'who resisted the reform of the representation of the people to the last.[4] Among others, there was George Canning, one of the greatest and most popular statesmen that has ever sat in the councils of the sovereigns of this country. He was in favour of Catholic emancipation, he was a Liberal, almost a Radical, in foreign policy, but to the last moment he resisted that reform.'[5]

[1] See Hansard's *Parl. Debates*, third series, vol. viii. 8, 9.
[2] *Ibid.* 807, 1 & 2 William IV. caps. 36, 37.
[3] *Ibid.* vol. cciii. 137–145.
[4] Mr. Gladstone 'denounced' it. See his 'Life' by G. D. E. Russell, p. 21.
[5] The Duke of Argyll at Glasgow, Nov. 1, 1893, *Times*, Nov. 2, 1893.

The Earl of Aberdeen and Viscount Melbourne, both afterwards Whig prime ministers, were originally opposed to reform.

The Earl of Aberdeen, entertaining the opinion that such a measure, however inevitable, would be attended by unfortunate consequences, considered that the House of Lords should, in the first instance, reject the bill, as a solemn protest against its tendency; but that it should accept the measure, when brought up again, and face its consequences.[1]

Lord Melbourne only recanted on October 3, 1831, when the second Reform Bill came before the House of Lords. 'He had to confess that hitherto he had resisted every movement towards reform.'[2]

Earl Grey, no doubt, was 'a sincere reformer'; but, then, Mr. Dunckley,[3] himself a strong Radical, assures us that Earl Grey was 'an aristocrat to the core.' 'I have little fear,' he writes to Sir Herbert Taylor,[4] 'of carrying through parliament the Reform Bill, with the general approval of the public, though not of the Radicals, whom nothing would satisfy but the complete adoption of their own extravagant and mischievous projects.'

King William's secretary expresses that monarch's agreement with Earl Grey's sentiments touching 'the wild and mischievous projects of the Radicals.'[5]

And who was one of the foremost supporters of reform in 1832? Why, Mr. Stanley, afterwards Lord Stanley—the 'Rupert of debate'—the great Earl of Derby—the deadliest enemy of Church spoliation, and twice (1852 and 1858) Conservative prime minister!

Who was the author of household suffrage in the cities and boroughs? Mr. Disraeli, once the able lieutenant of the Earl of Derby in the House of Commons, and afterwards twice (1868 and 1874) prime minister and leader of the Conservative party!

What nonsense, therefore, to speak of reform as bearing the special trademark of the Radicals!

[1] *The Prime Ministers of Queen Victoria—The Earl of Aberdeen*, by the Hon. Sir Arthur Gordon, G.C.M.G. (1893), p. 105.
[2] *Ibid. Lord Melbourne*, by Henry Dunckley, p. 148. [3] *Ibid.* p. 152.
[4] *Correspondence of the late Earl Grey with King William IV. and with Sir Herbert Taylor*, vol. i. p. 52. [5] *Ibid.* pp. 54, 55.

The House of Commons, as we have seen,[1] had been subjected to re-election, owing to the death of King George IV., in July 1830. It only began to sit in October in that year; and Earl Grey only came into power in November.

The first Reform Bill of 1831 never reached the Lords. It passed the second reading in the House of Commons by a majority of one; but on the motion for committee General Gascoigne defeated the government of Earl Grey by carrying an 'instruction,' which was considered fatal to the bill, by a majority of eight.

The 'Small Work' says[2] that 'the House of Lords began the fifty years period by rejecting the Reform Bill of 1831.' The writer might have had the honesty to state that the first Reform Bill of 1831 received its death-blow in the Commons.

Nothing was further from men's minds than the idea of a fresh dissolution. But Earl Grey's government were equal to the occasion.

They usurped the royal prerogative and made, behind the king's back, every arrangement for a dissolution. The whole procession even to the House of Lords, including the issuing of orders to the troops to be in attendance,[3] was actually arranged before the king was informed that a dissolution was in contemplation. It is not surprising that the king was greatly displeased; but, being a constitutional sovereign, he yielded to the entreaties of his cabinet, and actually arrived at the House of Lords just before an address to the Crown, 'praying that his Majesty will be graciously pleased not to exercise his undoubted prerogative of dissolving parliament,' could be put to that House.

If ever there was a 'trick' practised on a sovereign, it was on this occasion; but the only 'trick' that the jaundiced eyes of Mr. Spalding can see,[4] in the whole transaction, is the motion of Lord Wharncliffe for an humble address to his Majesty, praying him not to exercise his prerogative of dissolving parliament!

[1] Chap. xviii. *supra.* [2] P. 31.

[3] Lord Brougham says the king used to call this 'my High Treason.' *Life and Times*, by Himself, iii. 116. [4] *House of Lords*, chap. xvi. p. 197.

Mr. Fox had, in the previous century, carried a precisely similar resolution against Mr. Pitt.[1]

There was plenty of 'popular excitement'[2] at the general election, but it did not deter the Peers from recording their 'solemn protest.'

'Reject the bill as a solemn protest against its tendency,' was the advice of the Earl of Aberdeen; and this the Lords did by a majority of 41, in a pretty full house—199 to 158—on October 7, 1831.

The House of Lords did not reject the bill a second time, also in accordance with the Earl of Aberdeen's advice:—

'Accept the bill, when it comes up again, and face its consequences.'

Parliament was prorogued on October 20, 1831, by the king in person, and when it reassembled in December a third Reform Bill was introduced.

The king was convinced that the bill ought to become law. He told Lord Brougham, at a private interview, that 'the shock of the change was much overrated, and that, when once the bill was passed, things would slide into an easy and quiet posture as before.'[3] The king, accordingly, used his influence with the Peers to secure the bill a second reading when sent up to them from the House of Commons. The result was that the second reading was carried in the House of Lords by a majority of nine.

But fresh perils awaited the measure. Lord Lyndhurst's motion, in committee on the bill, postponing the clause disfranchising the boroughs enumerated in Schedule A, was carried by a majority of 35—151 to 116.

The cabinet met next day and passed a minute, 'humbly suggesting the expediency of advancing to the honour of the peerage such a number of persons as might insure the success of the bill in all its essential principles.' Their alternative was 'to tender to your Majesty, with every sentiment of

[1] See Chap. xviii. *supra.*

[2] *The House of Lords; a Retrospect and a Forecast*, chap. xiii. p. 148.

[3] *The Life and Times of Lord Brougham*, written by Himself, iii. 145.

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respect and gratitude, the resignation of the offices which your Majesty's servants hold from your Majesty's favour.' [1]

The king replied to this minute next day (May 9, 1832):—'It is not without the truest concern that the king acquaints his confidential servants that, after giving due consideration to the minute of the cabinet, which was brought to him yesterday afternoon by Earl Grey and the Lord Chancellor,[2] and to the consequences of the alternative, which it offers for his decision, of being deprived of the benefit of their further services, or of sanctioning the advancement to the peerage of a sufficient number of persons to insure the success of the Reform Bill in all the principles which they consider essential, His Majesty has come to the painful conclusion of accepting their resignations.' [3]

Lord Lyndhurst, with whom the king first communicated, advised him to send for the Duke of Wellington. The duke, however, failed to form an administration; and Sir Robert Peel, when communicated with, declined the proffered honour.

King William has himself stated that he 'received assurances from the Duke of Wellington and Lord Lyndhurst, that they would not attend the further discussions of the reform bill.' [4]

'His Majesty received similar assurances from other peers in personal communication to himself.' [5]

Earl Grey was recalled; but it was not until the king had obtained the assurances referred to in his letter to the Earl of Mansfield that he consented to exercise his royal prerogative of creating new peers. And how carefully guarded was the suggested creation! 'His Majesty authorises Earl Grey, if any obstacle should arise during the further progress of the bill, to submit to him a creation of peers, to such an extent as shall be necessary to enable him to carry the bill, always bearing in mind that it has been, and still is, his Majesty's object to avoid any permanent increase to the peerage, and, therefore, that this addition to the House of Peers, if, unfor-

[1] *The Correspondence of the late Earl Grey with His Majesty King William IV.* vol. ii. pp. 394, 395.

[2] Lord Brougham.

[3] *Correspondence*, vol. ii. p. 395.

[4] Letter of the king to the Earl of Mansfield. *Correspondence*, vol. ii. pp. 427, 428.

[5] *Ibid.*

tunately, it should become necessary, shall comprehend as large a proportion of the eldest sons of peers, and collateral heirs of childless peers, as can possibly be brought forward.'[1]

A considerable secession from attendance at the House of Lords was what the king anticipated; and he was not disappointed. Only twenty-two peers voted against the bill on the third reading.[2]

Mr. Walpole says:—'The ministry had, at last, obtained the full authority which they required. But they fortunately discovered that it was unnecessary for them to avail themselves of it. The king's letter had done its work. Wellington and other peers, obeying his Majesty's hint, abstained from taking any further part in the discussions on the Reform Bill.'[3]

The Lords' amendments were agreed to by the Commons, *nem. con.*; and yet the author of 'Fifty Years of the House of Lords' has the audacity to say,[4] 'The Lords contrived to save the freemen from political extinction. This change was reluctantly assented to by the Commons.'

Daniel O'Connell said[5]:—'I support the Lords' amendments, because the bill has come down from the Lords with a greater extension of the franchise, and a broader basis of principle, than when it was sent up there.'

An amusing attempt is made by Mr. Spalding to belittle the king, in connection with this historic occasion.[6] But the king's letters to Earl Grey are models of courtesy and firmness, and his conduct throughout was not only in every way worthy of a constitutional sovereign, anxious to preserve the balance of power between the monarchical, the aristocratic, and the democratic principles, but marked by statesmanlike sagacity and foresight.

I prefer very much to Mr. Spalding's partisan platitudes the *résumé* given of the king's conduct by the son of Earl Grey, in the preface to the correspondence between the king and his prime minister:—

[1] The king to Earl Grey, May 18, 1832. *Correspondence*, vol. ii. p. 434.
[2] Hansard's *Parl. Debates*, third series, vol. xiii. 374.
[3] *History of England*, vol. ii. chap. xi. pp. 679, 680.
[4] P. 33.
[5] Hansard's *Parl. Debates*, third series, vol. xiii. 462.
[6] *The House of Lords*, chaps. xiii. and xiv. 144–170.

'A very large creation of peers for the purpose of carrying the Reform Bill would have been so great an evil, even in the judgment of those who advised it, that nothing but the dread of still greater evils would have induced them to propose it. It was natural, therefore, that the king should have shrunk from taking such a step, and should have thought it better to throw upon the opponents of reform the responsibility of endeavouring to form a new administration to carry on the government of the country, in the circumstances created by their victory in the House of Lords. Nor can it be doubted that the result of the king's decision proved that it was far the best for the nation that he could have adopted. If he had accepted the advice his ministers were compelled to offer him, even the large creation of peers they contemplated might have been insufficient to enable them to carry the bill satisfactorily through the committee. And it would certainly have provoked a bitter and determined resistance in all the further stages of the bill, not only from those who had all along been its uncompromising enemies, but also from those who, with Lords Harrowby and Wharncliffe, had voted for its second reading, though they had opposed the former measure. The powerful party of the opposition, thus re-united, and not improbably reinforced by some of those who had hitherto voted for reform, but who would have been alienated by the violence of the means taken to coerce the House of Lords, would have obstinately fought every detail of the bill in committee. To overcome this resistance, the government might have been driven to a further creation of peers. But even this expedient, destructive as it would have been to the character of the House of Lords and the balance of the constitution, would have been of little avail to cut short a struggle which might have been almost indefinitely prolonged, and which would have excited such fierce passions, both in the House and out of doors, that it is impossible to conjecture to what acts of even revolutionary violence they might have led.'[1]

A Liberal writer, strongly opposed to the House of Lords,

[1] Preface to the *Correspondence of the late Earl Grey with His Majest King William IV.*, edited by the late Henry, Earl Grey, vol. i. pp. ix., x

has pointed out how soon the reaction came, after the Reform Act of 1832 :—

'The great victory of 1832 had, in fact, produced in a limited way the consequences which had resulted from the great convulsion of 1789. Timid politicians, alarmed at the excesses of the republicans in France, had rallied in support of Pitt in the closing decade of the eighteenth century, and timid politicians, alarmed at the power of the tide which forced the Reform Act through parliament, were rallying in support of King and Peerage in the fourth decade of the nineteenth century.' [1]

A member of Lord Rosebery's cabinet, Sir George Trevelyan, who is no lover of the House of Lords, writes :—

'Those who have joined in the idle jubilation over the impotence and helplessness of the House of Lords, with which, in our own day, triumphant partisans celebrated the downfall of the Irish Church, and the abolition of purchase in the army, would do well to study the history of the decline and fall of Lord Melbourne's administration.' [2]

The Factory Acts

'I can think of no one,' said the late Earl of Carnarvon, in the course of a debate in the House of Lords,[3] 'who so conciliated public respect—who laid, as regards this House, so deeply the foundations of English respect for old institutions, as the late Lord Shaftesbury.'

Lord Shaftesbury declined high office, in order that he might devote his life to the cause of social reform on behalf of the working classes. Like many distinguished peers, his career began in the Lower House.[4]

He thus graphically described the benefits conferred by factory legislation [5] :—

'The masters engaged in textile manufactures and the heads

[1] *The History of England*, by S. Walpole, vol. iii. chap. xiv. p. 374.
[2] *The Life and Letters of Lord Macaulay*, vol. ii. chap. viii. 55, 56.
[3] Hansard's *Parl. Debates*, third series, vol. cccxxxiv. 340.
[4] As Lord Ashley, M.P.
[5] Hansard's *Parl. Debates*, third series, vol. clxxxix. 1208–1211.

of great establishments, all, without exception, testified to the great social, physical and moral blessings which had been the result of factory legislation. He believed that they might ascribe, in no small degree, to that legislation the noble conduct of the Lancashire operatives during the cotton famine. Supported by the feeling that they were really cared for by the legislature, they had endured, with unparalleled heroism, the suffering to which they had been subjected. He had been informed that in every instance, whether of textile fabrics, potteries, or fustian-cutting, the work done was both greater in quantity and improved in quality, because the employed brought untired limbs and minds to their work: while, simultaneously, wages had risen, without any loss to the employers. By showing this interest in the welfare of the people, and by endeavouring in this way to advance their moral, social, and physical improvement, they would be doing more for their happiness than even by the great measure of reform which they were now passing, to enfranchise the great mass of the people, and they would make that reform more easy and more successful in its operation.'

On the other hand, Mr. Cobbett, a Radical member, said, in 1833:—

'Whenever a government, or whenever a legislature, attempted to interfere in the regulation of labour, it always failed.'[1]

Mr. Fryer, Radical member for Wolverhampton, 'was satisfied that the Factories Bill would prove nothing but a delusion.' A repeal of the Corn laws was 'the only relief that could be afforded to a manufacturing population.'[2]

Mr. Mark Philips, Radical member for Manchester, said that, if the bill were to pass for two years, or even for one year, at the end of that time the trade would be wholly gone from this country, and would be in the hands of foreigners.'[3]

Mr. Potter, Radical member for Wigan, 'must repeat what he had said on the previous night, that, if such a bill were to

[1] Hansard's *Parl. Debates*, third series, vol. xv. 1294.
[2] *Ibid.* vol. xvi. 879, 880. [3] *Ibid.* 1001.

pass into law, a blow would be inflicted on the cotton-trade from which it never could recover.' [1]

The 'party of stupidity' was, I submit, in reference to factory legislation, as well as to the truck system, the Radical party!

The first important bill on the subject received the royal assent on August 29, 1833,[2] and, therefore, falls within the period during which the House of Lords is said to have opposed beneficent legislation!

The Duke of Argyll, no mean authority and himself a genuine Liberal, though not a Home Ruler, has described the conduct of the House of Lords in reference to the Factory Acts [3]:—

'Had the late Lord Shaftesbury any difficulty in carrying those measures through the House of Lords? No; the opposition offered to them in the House of Commons was much more serious than that offered in the House of Lords; and when they came to the House of Lords, although they were not received with enthusiasm—for that was not the special quality of their Lordships' House—they were passed with much less difficulty. . . . Among the many measures which *during the last fifty years* had tended to prove the wisdom of parliament and the political instincts of the British people, and which had tended to the happiness of the working classes, none, in his opinion, stood before the Factory Acts.'

Jewish Disabilities

I have shown that the opposition to the removal of Jewish disabilities took its first rise in the House of Commons.[4]

The question never came before the House of Lords till after the Reform Act.

Mr. Gladstone was first returned to parliament in 1832, just after the passing of the Reform Act. The following passage from one of his speeches will give a good idea of his

[1] Hansard's *Parl. Debates*, third series, vol. xvi. 1001.

[2] 3 & 4 Will. IV. cap. 103. 'An Act to regulate the labour of Children and Young Persons in the Mills and Factories of the United Kingdom.'

[3] Hansard's *Parl. Debates*, third series, vol. cccxxvii. 403, 404.

[4] See chap. xviii. (The Georges), *supra* (1830).

line of argument on this question:—'The profession of the Jews is of itself in the nature of a disqualification for legislative office in a country where Christianity is interwoven with the institutions of the State. In our general practice our laws are modelled on the principles of Christianity, and you have a solemn recognition of those principles in a practice—which I trust will never be discontinued—of commencing the daily proceedings of both Houses of Parliament by the solemn invocation and worship of the Almighty. The question, then, really before the House, as it appears to me, is this: whether you will consent to destroy the distinctive Christianity of the constitution?'[1]

On May 22, 1833, we find him voting against the second reading of the Jews' Civil Disabilities Bill.[2]

A very factious opposition was offered to the bill, when Mr. Grant moved that the House resolve itself into a committee on the bill. Sir Charles Burrell moved that 'the House do now adjourn.' The House divided. 'Ayes' 22, 'Noes' 117; majority 95. Mr. Gladstone's name will be found amongst the 'Ayes.' Sir Robert Inglis moved that 'the debate be now adjourned.' The House divided. 'Ayes' 24, 'Noes' 117; majority 93. Mr. Gladstone voted with the 'Ayes.'[3] On the motion for the third reading of the bill on July 23, 1833, a division took place. 'Ayes' 189, 'Noes' 52; majority 137. Mr. Gladstone voted with the 'Noes.'[4]

While Mr. Gladstone thus opposed the bill in the House of Commons, a most reverend prelate of transcendent ability, Dr. Richard Whately, archbishop of Dublin, spoke with great eloquence in favour of the bill in the House of Lords,[5] and so did the Bishop of Chichester.[6]

'It has been urged,' said Archbishop Whately, 'that the Jews are suffering a Divine judgment, from the effects of which we must not attempt to rescue them. It is true that they are, nationally, under a judgment. I look on that nation

[1] Hansard's *Parl. Debates*, third series, vol. lvii. 754–760. See also vol. lvi. 506–507.
[2] *Ibid.* vol. xviii. 61.
[3] *Ibid.* 1251, 1252.
[4] *Ibid.* vol. xix. 1081, 1082.
[5] *Ibid.* vol. xx. 226–235.
[6] *Ibid.* 238.

as an extraordinary monument of the fulfilment of prophecies, and as paying the penalty of their rejection of the Messiah. But we must be very careful how we, without an express commission, take upon ourselves to be the executioners of Divine judgment, lest we bring a portion of these judgments on ourselves. We are not to act on the will of the Lord according to our own conjectures as to His designs, but according to the commands He has expressly given us. If we justify the exclusion of the Jews from a participation in those civil rights which the rest of us enjoy, on the ground that we are thus fulfilling the judgment of Divine Providence, we must remember that on the same plea the infernal cruelties committed by the Romans and their allies, at the destruction of Jerusalem, might no less be justified. For these, also, were judgments prophetically denounced against the Jews. Nay, more, the Jews themselves would, on this ground, be justified for the very crime with which they are now upbraided, the crucifixion of Jesus; for this, also, was in accordance with prophecy, and in conformity with the Divine will.'

As for Jews legislating for the Church, the archbishop argued that 'the danger was less in the case of Jews than in the case of Roman Catholics and dissenters.'

'I cannot,' he said, 'consent to withhold civil rights from the Jews when Roman Catholics and dissenters have been admitted into parliament. The nearer any class of men approach to ourselves in their faith, the more likely they are to interfere with ours.' 'This bill,' he added, 'differs materially from that by which the disabilities of the Roman Catholics were removed, because many persons being already peers were by that bill at once admitted to parliament.[1] That will not be the case in this instance, because no Jew can set foot in parliament until he has been elected by a Christian constituency.'[2]

The Bishop of Chichester expressed his intention of voting

[1] On Tuesday, April 28, 1829, three Roman Catholic peers, the Duke of Norfolk, Lord Clifford, and Lord Dormer, took the oath prescribed, and their seats. On Friday, May 1, three others, Lord Stafford, Lord Petre, and Lord Stourton. *Annual Register* for 1829, p. 82 ('Chronicle').

[2] See also the *Life of Archbishop Whately*, by Miss Whately, i. 188.

for the bill as a 'measure of conciliation,' and declared that 'the Jews are the elder brothers of Christians.'

When Mr. Grant, on April 25, 1834, moved the preliminary resolution on which the Jewish Disabilities Removal Bill was to be founded, the name of Mr. Gladstone appears amongst a small band of 'stalwarts' who resisted this preliminary motion: 'Ayes' 53, 'Noes' 9. List of the 'Noes'—the sixth name is that of Mr. Gladstone.[1]

Mr. Gladstone also voted against the second reading of the bill: 'Ayes' 123, 'Noes' 32; majority, 91. Mr. Gladstone's name will be found amongst the 'Noes.'[2] Mr. Gladstone also voted against the third reading of the bill: 'Ayes,' on the question of adjournment—sheer obstruction, 14, 'Noes' 56; majority, 36. Mr. Gladstone voted with the obstructionists.[3]

Mr. Spalding[4] has scheduled, under the head of 'Jews' Disabilities Relief Bill': 'Passed by the Commons. Rejected by the Lords': '1836: ditto, ditto.'

The author of 'Fifty Years of the House of Lords'[5] is more accurate. His little schedule is: 'Date, 1836; Commons for, 17'; 'Lords against'; 'withdrawn.'

But Mr. Spalding has many inaccuracies.

The Abolition of Church-Rates

In 1837 Lord Melbourne's government brought forward a scheme for providing a substitute for church rates 'out of an increased value given to church lands.'

In opposing this scheme Mr. Gladstone observed:—'It is said that the dissenters are actuated in their resistance to church-rates by a scruple of conscience. I will not speak of them with any species of disrespect, or accuse them of factious and discreditable motives; but this I will say, I do not think the motive of their resistance is entitled to so sacred a name as a "scruple of conscience." A "scruple of conscience" is a sacred thing, and brings with it claims which cannot be

[1] Hansard's *Parl. Debates*, third series, vol. xxii. 1372, 1373.
[2] *Ibid.* vol. xxiii. 1176. [3] *Ibid.* vol. xxiv. 383.
[4] *House of Lords*, appendix, pp. 262, 265. The error is twice repeated.
[5] P. 43.

resisted. It may be a matter of dislike, objection, or opposition, and it may be right or wrong in that respect, but it is no "scruple of conscience." As long as the payment is law no "scruple of conscience" can fairly resist it. Where, as in this country, the revenues of the Church are scarcely sufficient for those great purposes to which it is destined, the mutilation of any branch of its revenues, or the curtailment of its resources, would be an infraction of the most sacred duty of the legislature. I am convinced that by agreeing to the plan of the government you will subvert the Established Church. It is plain from the recorded admissions of the organs of dissenters in this House that all future attempts to act on the principle of an Establishment will be resisted to the utmost by that which styles itself "the popular party." Are you prepared to surrender that principle which is the strength and glory of the empire? Will you now consent to compromise the security of its firmest bulwark? No ministry will dare to propose its unconditional surrender.'[1]

It was the House of Commons which led the way in rejecting proposals for the unconditional abolition of church rates.

Mr. Harvey, on June 12, 1837, moved that 'it is the opinion of this House that, after a time to be fixed, the payment of church rates in England and Wales ought wholly to cease.'[2]

The House divided: 'Ayes' (for Mr. Harvey's motion) 58, 'Noes' (against it) 489; majority 431.[3]

University Tests

'The first bill opening the universities to dissenters was sent up to the Lords shortly after the Reform Act, by a majority of 164 to 75. It was rejected by the Peers by a majority of 187 to 85.'[4]

Amongst the members who voted against Mr. Wood's application for leave to bring in this very bill was Mr. Gladstone.[5]

[1] Hansard's *Parl. Debates*, third series, vol. xxxvii. 489–502.
[2] *Ibid.* vol. xxxviii. 1408–1415.
[3] *Ibid.* 1433, and see the *Annual Register* for 1837, p. 105 ('History')
[4] *Fifty Years of the House of Lords*, p. 41.
[5] Hansard's *Parl. Debates*, third series, vol. xxii. 929.

Sir Robert Peel (who certainly was no bigot) delivered a powerful speech against the bill on the second reading. 'He did not hesitate to say he considered it was one of a series of measures aimed at the existence of the Established Church.' Of the religious principle in connection with the universities, Sir Robert said, 'It is the charm and essence of their existence.'[1] Mr. Gladstone voted against the second reading.[2]

The division mentioned by the author of 'Fifty Years of the House of Lords' took place on the third reading. Mr. Gladstone both voted[3] and spoke[4] against the bill on the third reading. 'It cannot be denied,' he said, 'that the object of the founders and benefactors of these institutions was the maintenance of the Established Church and the cultivation of its doctrines in the rising generation of the country. For 800 years that object has been kept in view, and the universities have become the preparatory seminaries to the Church Establishment. Now in a country where there are seminaries for all her professions, is it too much to demand that the Church shall be allowed her seminaries too? The universities have been spoken of as national institutions. I admit the term, but not in the sense with which it is generally put forth. They are undoubtedly "national institutions," but only in so far as they are connected with the National Church. A certain fixed course of study and discipline must be observed. Throughout the whole scheme of instruction, including the classics themselves, there is (or should be) a constant aim at the one grand object of Christian and moral improvement kept in view. . . The following passage I will take the liberty to read from the memorable declaration of nearly 100 of the heads of colleges and others immediately connected with the instruction and discipline of the place: "The University of Oxford has always considered religion to be the foundation of all education, and we cannot ourselves be parties to any system of instruction which does not retain this foundation." I very

[1] Hansard's *Parl. Debates*, third series, vol. xxiv. 699, 702.
[2] *Ibid.* 714. [3] *Ibid.* vol. xxv. 654. [4] *Ibid.* 635–639.

much fear that the House, in establishing their present principle of religious liberty, will drive from their functions men who have so long done honour and service to their country, and thus inaugurate their reign of religious peace by an act of the grossest tyranny.'

Even Viscount Melbourne, the Liberal prime minister, expressed regret that 'the object of the Bill' should be 'forced by the violence of an act of parliament on the universities.'[1]

His Royal Highness the Duke of Gloucester, chancellor of the University of Cambridge, and the Duke of Wellington, chancellor of the University of Oxford, both opposed the bill.[2]

The Duke of Wellington vindicated his hostility on the ground that the object of the bill was 'to force' 'the two institutions, chartered, not only by prescription but by gift of the kings of England, and even by act of parliament,' to alter their statutes.

The author of 'Fifty Years of the House of Lords'[3] singles out the hero of Waterloo for special animadversion:—'The Duke of Wellington laid down the law that the king's coronation oath compelled him to reject every proposal to allow nonconformists to be educated at Oxford and Cambridge.'

The substance of the duke's argument was that the House of Lords, as hereditary counsellors of the Crown, 'could not approach their sovereign with this bill and desire his assent to it, knowing, as they did, that it went to overturn every principle contained in his oath.'[4] The duke was discussing not what the king ought to do or was 'compelled to do,' but what the House of Lords ought not to do—namely, ask his assent to this bill, as they would practically be doing if they passed it.

The speech of the Archbishop of Canterbury[5] is peculiarly interesting, for he clearly indicated the points of close contact between the universities and the National Church:—

'Most certainly,' he said, 'one great object of these institutions was to encourage a sound religious education, and they

[1] Hansard's *Parl. Debates*, third series, vol. xxv. 840, 841.
[2] *Ibid.* 828, 832.
[3] P. 40.
[4] Hansard's *Parl. Debates*, third series, vol. xxv. 839, 840.
[5] *Ibid.* 854, 861.

had always been connected with the Established Church of the country, whatever that might have been. Religious education and useful knowledge were the objects contemplated by these institutions; and their works spoke for them, for with all the colleges there were churches connected, in which provision was made for performing the service of the Church of England. This was apparent, also, from the language used in the Act of Uniformity. The canon required that, in the universities, attention should be paid to Divine Service and to the use of the sacraments, as directed in the Book of Common Prayer, and those regulations applied as much to the universities as to their churches. The tutors were required to instruct the young men in the evidences of the Christian religion, and to do all in their power to bring them to conformity with the discipline of the Church. It was required that they should be examined in the principles of religion.'[1]

'Discouraged by their defeat,' says Mr. Walpole,[2] 'the dissenters, instead of continuing the attack, laboured to obtain a charter for the new University of London.'

'The Liberals, in 1835, were not all desirous of opening the great Universities of Oxford and Cambridge to the dissenting community. But they thought that the non-conformists might be given the advantages of a university education by conferring a charter on the modern University of London, and by empowering it to grant degrees.'[3]

'The institution of this new university in 1836 removed one of the most obvious of the dissenters' grievances.'[4]

The Religious Assemblies Bill, 1834

The author of 'Fifty Years of the House of Lords'[5] waxes very indignant over the rejection by the House of Lords of the Religious Assemblies Bill, 1834.

The author gives a garbled quotation from the Bishop of

[1] Hansard's *Parl. Debates*, third series, vol. xxv. 855, 856. It will be found, when we come to consider the University Tests Act, 1871, that religious education at Oxford and Cambridge Universities has been carefully safeguarded, in all the points named by the primate in 1834.

[2] *History of England*, vol. iv. chap. xxi. p. 415.

[3] *Ibid.* vol. iii. chap. xiv. p. 297.

[4] *Ibid.* vol. iv. chap. xxi. p. 415.

[5] Pp. 39, 40

Exeter's speech; but what the Bishop said was then, and is happily still, perfectly true, that 'when (as, for instance, at the Union with Scotland [1]) the constitution of the country in Church and State was declared to be preserved, "unalterable," the fundamental articles of the Church were considered to form part of that constitution.' [2] 'The acts of parliament for the establishment and preservation of the Church of England, and the doctrine, worship, discipline, and government thereof, shall remain, and be in full force for ever.' That is the language of the Act of Union between England and Scotland, as every schoolboy knows,[3] and though the author of 'Fifty Years of the House of Lords' is pleased to call the Church of England 'a sect,' [4] the statute book does not call her so.

The author entirely misconceives the object of the Religious Assemblies Bill. He treats it as a bill for the relief of nonconformists, which that bigoted House of Lords 'rejected without a division.' Mr. Hardy, who had charge of the bill in the House of Commons, said that 'the bill was designed to allow lay members of the Established Church, in situations where they were destitute of public worship, to read a portion of the Liturgy, and, perhaps, a sermon, in their houses, or in the servants' halls, and allow the presence of their poor neighbours. He only wished to secure to members of the Church of England the same privileges that dissenters enjoyed.' [5] The bill was opposed both in the Lower [6] and in the Upper House [7] on the same ground, namely, that as the services would be held wholly independently of episcopal supervision, they would be subversive of church discipline. 'Justice to nonconformists,' [8] never entered into the minds of the promoters of the bill. Mr. Gladstone voted against the third reading in the Commons.[9] Lord Brougham, Earl Grey's chancellor, opposed it in the

[1] 5 Anne cap. 5; 5 Anne cap. 8.
[2] Hansard's *Parl. Debates*, third series, vol. xxv. 29.
[3] See also sect. 24 of the 10 Geo. IV. cap. 7. [4] P. 45.
[5] Hansard's *Parl. Debates*, third series, vol. xxiv. 361.
[6] *Ibid.* vol. xxiii. 1003–1006; vol. xxiv. 360–365.
[7] *Ibid.* vol. xxv. 27–31. [8] *Fifty Years of the House of Lords*, p. 40.
[9] Hansard's *Parl. Debates*, third series, vol. xxiv. 365.

Upper House, because, he said, 'if it were allowed to churchmen to have as many meeting-houses as they pleased, according to the rites of their own Church, they would lose the church-going habit, which was, in itself, good.'[1]

Mr. Spalding[2] must share, with his rival, the discredit of having found, in the case of the Religious Assemblies Bill, what is popularly termed, 'a mare's nest.'

The Poor Law Amendment Act, 1834

One of the most obnoxious features of 'Fifty Years of the House of Lords' is the garbled quotations which it gives from the speeches of peers and members of parliament, so as to utterly pervert their meaning. A good illustration of this occurs on p. 52:—'In the great Poor Law Act of 1834 most of the Lords' amendments were agreed to by the Commons, Lord Althorp somewhat significantly expressing his gratitude that their alterations had not made the bill *much* worse.' What Lord Althorp really said was:—'Looking at the bill altogether, and comparing its present state with that in which it passed the House of Commons, I must fairly say I certainly do not think it is *at all* the worse for the alterations which have been made.'[3]

'The Lords amended the Poor Law Bill in 1834, so as to deprive nonconformist ministers of access to the workhouses, and the first 'conscience clause' passed by the Commons was rejected by the Peers. Fortunately the Commons insisted and the Lords reluctantly consented to its restoration.'[4] The writer seems to have nonconformity on the brain. The clause was struck out in the House of Lords, on the motion of that friend of civil and religious freedom, Lord Brougham (who presided over its deliberations as lord chancellor), and his motion was carried, *nem con.*[5]

[1] Hansard's *Parl. Debates*, third series, vol. xxv. 30, 31.

[2] See *The House of Lords; a Retrospect and a Forecast*, appendix, pp. 62, 264.

[3] Hansard's *Parl. Debates*, third series, vol. xxv. 1208. I leave it to the candid reader whether the substitution of 'much' for 'at all' is not dishonest.

[4] *Fifty Years of the House of Lords*, p. 44.

[5] Hansard's *Parl. Debates*, third series, vol. xxv. 913. (Mr. Spalding gives a wrong reference. *House of Lords*, appendix, p. 262.)

When the Lords' amendments came before the House of Commons, Lord Althorp said:—'The clause which had been proposed by the hon. member for Beverley [1] might have interfered considerably with the discipline of workhouses. The omission of that clause would not be a matter of any practical importance. He felt quite assured that there would be no interference with the visits of dissenting ministers to the workhouses.[2] He could not construe this amendment of the Lords into a prohibition of the entrance of dissenting ministers into workhouses. He viewed the restoration of this clause as unnecessary; for, as the law stood at present, dissenting clergymen had a right to enter all workhouses.'[3] After a short discussion, however, Lord Althorp said[4] that, 'as it appeared to be the wish of the House that the clause should be reinserted, he would make no objection.'

When the report of a conference between Lords and Commons on this subject was presented, the Lord Chancellor said[5]:—

'I am clear that the clause which the Commons propose to retain is entirely superfluous; and but for the great respect which I entertain for the House of Commons, I should say that it is absurd that this clause should be left in. I know, from the legal advisers of those who have framed the clause, that they who introduced it will gain nothing by it.' 'I mean,' he added, 'to protest against the clause, and I decline to move its adoption.' At the same time he pointed out that the bill might be lost, if the Commons' amendments to the Lords' amendments were rejected.

Lord Wynford moved the adoption of the Commons' amendments, which was agreed to.

It is evident, therefore, that the author of 'Fifty Years of the House of Lords'[6] Mr. Spalding[7] (and Mr. Bowen-Graves, from whom all this ridiculous fuss about 'the workhouse

[1] The clause was not in the original bill, as introduced by the Liberal government.

[2] Hansard's *Parl. Debates*, third series, vol. xxv. 1210, 1211.

[3] *Ibid.* 1225. [4] *Ibid.* 1226. [5] *Ibid.* 1235-7. [6] P. 44.

[7] *The House of Lords; a Retrospect and a Forecast*, appendix, pp. 262, 264.

conscience clause' is borrowed[1]) have discovered another 'mare's nest.'

Irish Marriages

1835. Catholic Marriages (Ireland) Bill rejected[2]

The author of 'Fifty Years of the House of Lords'[3] denounces the 'law,' 'which the Commons proposed to repeal,' as a 'penal law'; but Mr. Lecky cites it as an illustration not of the 'penal laws' (which he deals with at great length), but of 'the dissolution of religious marriages for temporal reasons':—'The dissolution of religious marriages for temporal reasons' was not altogether new to British law. In the Regency Bill, which was passed on the death of the Prince of Wales in 1751, there was a clause annulling any marriage contracted by the young heir to the throne, before the expiration of his minority, without the consent of the regent or the major part of the council; and a similar principle was involved in the Irish law annulling marriages between Protestants and Catholics celebrated by priests or degraded clergymen.[4]

The Irish statute, 12 George I. cap. 3, commences with this recital:—'Whereas clandestine marriages are, for the most part, celebrated by Irish priests and degraded clergymen, to the manifest ruin of several families within the kingdom, for remedy whereof be it enacted.'

The very first enactment preventing the celebration of these marriages[5] is entitled, 'an act for the effectual preventing of the taking away and marrying children against the wills of their parents and guardians.'

The framers of the principal act, which declares such marriages to be null and void,[6] did not contemplate that it would enable a Roman Catholic to repudiate his wife by

[1] *Fortnightly Review* for February 1873, p. 234. No. lxxiv. N.S.
[2] *The House of Lords; a Retrospect and a Forecast*, pp. 261, 264.
[3] P. 29. [4] *History of England*, vol. i. p. 497.
[5] 6 Anne cap. 16 (Irish Statutes), see sect. 6.
[6] 19 Geo. II. cap. 13 (Irish Statutes), sect. 1 (1745.) See also 8 Anne cap. 3, sect. 26; 23 Geo. II. cap. 10 (Irish Statutes); Hansard's *Parl. Debates*, third series, vol. xxx. 243, 244.

proving that he had attended a Protestant place of worship within the year prior to his marriage, because it places on the same footing a marriage 'between two Protestants' as a marriage 'between a papist and any person who hath been, or hath professed him or herself to be, a Protestant, at any time within twelve months before such celebration of marriage.'

The then Marquess of Clanricarde said that this definition of a 'Protestant' in the case of mixed marriages was inserted 'to prevent the danger of parties professing themselves Catholics, in order to avoid the penalty to which the priest was liable.'[1]

The movement in favour of civil marriage in Hungary is, the leading Gladstonian weekly organ informs us,[2] largely based upon the idea that 'social pressure' is 'put on the parents to be married according to the Roman rite alone, and the presumption will be that the children of a marriage so celebrated were intended by the parents to be Catholics too. The non-Catholic father will waive his rights, and allow himself to be described as a Catholic.'

The bill was only brought under the notice of the Lords on August 11, shortly before the prorogation of parliament.

Lord Farnham 'wished that some general measure might be brought in, with the support of the government, for the improvement of the law relating to marriage in Ireland. However, in the present late period of the session, due consideration could not be given to any measure on the subject.'[3]

The writer of the 'Small Work' admits[4] that, in a subsequent session, the Lords passed a measure to repeal the Irish enactment.

The Marriage Act, 1836

'The Lords inflicted a stigma on the dissenters' marriages by the Dissenters' Marriage Act, 1836, which only permitted

[1] The penalty was repealed in 1833. 3 & 4 Wm. IV. cap. 102.
[2] *The Speaker*, May 24, 1894.
[3] Hansard's *Parl. Debates*, third series, vol. xxx. 248.
[4] P. 29. In 1836 the majority in favour of the bill in the House of Commons was only eight. Mr. Gladstone voted against it. *Ibid.* vol. xxxiii. 831, 832.

marriage outside the Establishment to those who swore that they had conscientious objections to the service of the Church.'[1]

The reader will look in vain in the act, the 6 & 7 William IV. cap. 85, for the oath, which the author of the 'Small Work' says the House of Lords imposed upon dissenters. It is not there. What happened was this: Sir Robert Peel objected, when the bill was in committee in the House of Commons, that the bill, as it stood, would encourage members of the Church of England to avail themselves of marriage, without any religious ceremony, at the registrar's office. He thought that he imposed no invidious task upon the dissenters when he required that such of them as objected to marriage being a religious ceremony should state their objection.[2] Lord John Russell, who had charge of the bill, 'admitted the force of what had been stated by the Right Hon. Baronet,'[3] and himself moved the insertion of the following words:—'I do solemnly declare that I have conscientious scruples against marrying in any church or chapel, or with any religious ceremony.'[4] Lord John Russell stated that he had not intended them as any religious test. It was apprehended that the bill might encourage, contrary to the policy of the state, the making of marriage a mere civil contract.

'Instead of maintaining his own proviso, the reasonableness of which he had admitted, Lord John Russell resolved to sacrifice it to the dissenters.'[5]

It was left for Mr. Wilks to call the attention of the House of Commons[6] to the fact that the proviso of Lord John had been left in the bill, and in this form it had gone up to the Lords.

'The Commons,' says the 'Annual Register,'[7] 'were under the necessity of sending a message to the other House to have the bill returned, that the error might be corrected.'

[1] *Fifty Years of the House of Lords*, p. 44. The bill is not scheduled by Mr. Spalding.
[2] Hansard's *Parl. Debates*, third series, vol. xxxiv. 493.
[3] *Ibid.* 1025.
[4] *Ibid.* 1023. This was pointed out by Sir Robert Inglis.
[5] *Annual Register* for 1836, p. 130.
[6] Hansard's *Parl. Debates*, third series, vol. xxxiv. 1309, [7] P. 131.

So that when the bill came before the House of Lords, Lord John Russell's proviso was not in it; and the Lords made no attempt to reinsert it. Is it not a monstrous thing that the author of the 'Small Work' should deliberately bring the false charge against the House of Lords of having done so? 'The stipulation,' he says, 'was soon removed.' How could it be 'soon removed' when it was not in the enactment?

Charity Commission

'In 1835 the Lords rejected a proposal to appoint charity commissioners to inquire into the public charities of England and Wales.'[1]

This was a bill, as Lord Brougham said,[2] 'for appointing forty-four clerks and commissioners, and therefore, their lordships ought to know something of the grounds on which it was founded.'

The second reading was not moved till a fortnight before the prorogation of parliament,[3] 'too late,' Lord Brougham said, 'to inquire into matters of detail.'

It is not true that the Lords 'rejected' the bill. The order for the second reading was discharged on the motion of the Marquess of Lansdowne, who had moved the second reading. 'He admitted that their lordships were entitled to have laid before them either the evidence, or the report, of the committee of the House of Commons on which the bill was founded. Not being in possession of either the evidence or the report, he should not ask their lordships to pass the bill in the present session.'[4]

Constabulary Force (Ireland) Bill, 1835

'In 1835 the Lords rejected, by 51 votes to 39, the bill legalising the transfer, which had long taken place in fact, of the appointment of the inspectors of the constabulary from the magistrates to the Crown.'[5]

The control of the Irish constabulary was still vested in

[1] *Fifty Years of the House of Lords*, p. 52.
[2] Hansard's *Parl. Debates*, third series, vol. xxx. 961.
[3] August 25, 1835.
[4] Hansard's *Parl. Debates*, third series, vol. xxx. 960.
[5] *Fifty Years of the House of Lords*, pp. 22, 50.

the magistrates of Ireland; but they allowed the inspectors to nominate the constables.

The bill, which was a distinct invasion of the principle of 'local self government,' was brought under the notice of the Peers a fortnight before the prorogation of parliament. 'One objection,' said the Earl of Haddington,[1] 'is summed up in these words—"this is the 26th of August." The bill has been in possession of the Irish secretaries, I may say, ready prepared, for the last three or four years; and it is now, on the 26th of August, in the present session, brought before the House [for the first time]. At such a period of the year how can we be called on to make so great and essential a change in the police force in Ireland?'

Constabulary Force (Ireland) Act, 1836.
(6 & 7 *Will. IV. cap.* 13)

Next session the bill was reintroduced and received ample consideration at the hands of the Lords.

When Viscount Morpeth moved that the Lords' amendments be printed,[2] Sir George Sinclair said 'he considered the amendments which had been made by the Lords of the very highest importance. This was one of the many occasions when it became the House well to consider, and the country duly to estimate, the many advantages they derived from the independent legislative character and constitutional working of the House of Lords. They all knew in what state this measure had been sent up to the other House, and the enormous additional expenses it proposed to entail on the country for the maintenance of the constabulary of Ireland; but under the searching investigation to which the bill had been subjected those expenses had been greatly diminished, without at all impairing the efficiency of that force. These amendments had at once been acceded to by ministers. The House of Lords had on this occasion done what the hon. member for Middlesex,[3] if he had not slept at his post, should have pro-

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 1007.
[2] *Ibid.* vol. xxxiii. 904.
[3] Mr. Hume.

posed, and he trusted the line of conduct they had adopted on the present occasion would, at length, tend to make him more favourable to that assembly, by whom such economical measures had been carried into effect.'

On the motion of Viscount Morpeth the Lords' amendments were agreed to.[1]

Dublin Police Bill

'The Lords threw out the Dublin Police Bill in 1835, because the corrupt clique called the corporation had not been consulted.'[2]

The magnitude of the change involved in the bill may be realised from the fact that the control of the police of Dublin was to be taken from the corporation of that city and transfered to the lord lieutenant!

For 'lord lieutenant,' some noble lords were disposed to read, 'Daniel O'Connell, M.P. for the city of Dublin.'

The bill was read a second time without a division,[3] on the understanding that Viscount Duncannon, who had charge of the bill in the Lords, would ascertain, before the committee stage was reached, whether any notice of the bill had been given to the corporation of Dublin, in whom the control of the police of Dublin was vested by the 39 George III. and other statutes. This was on August 31, 1835. On September 4, when Viscount Duncannon moved the committal of the bill, he was obliged to confess[4] that 'no communication had been made to the corporation of Dublin with respect to this bill.' The Recorder of Dublin,[5] who was asked his opinion of the bill, did not appear to know anything about it!

The Duke of Wellington said that he had received a letter from the Lord Mayor of Dublin (Sept. 4), saying that, as he had never seen the bill, until the morning on which he wrote, it was wholly impossible for either him or the corporation to

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 1042, 1084, 1085.
[2] *Fifty Years of the House of Lords*, pp. 22, 50.
[3] Hansard's *Parl. Debates*, third series, vol. xxx. 1128.
[4] *Ibid.* 1330. [5] Mr. Shaw, M.P.

examine it. All that the duke asked was that 'this measure should be postponed till next session.'[1]

So lukewarm were the friends of the bill, without which 'the capital of Ireland' was, forsooth, 'left a prey to lawlessness,' that they did not even take a division on it. It was negatived without a division.[2]

The Dublin Police Act, 1837
(6 & 7 *Will. IV. cap.* 29)

In 1837 the Dublin Police Bill became law, after mature deliberation.

An Irish Registration Bill

'In 1835 the House of Commons sent up to the Lords a measure assimilating the Irish registration system to that of England.'[3]

This (so-called) Registration Bill greatly resembled the Registration Bill of the present government; it proposed to revolutionise the franchise, while ostensibly only amending the law of registration of voters.

'The indirect effect of the bill,' says the author of 'Fifty Years of the House of Lords,'[4] 'was to increase, to some small extent, the number of voters in Irish constituencies.'

Sir William Follett (the ex-solicitor-general)[5] said 'that the bill would produce very nearly *universal suffrage* in Ireland!' 'The question of qualification would depend on the solution of this point—how much the party made by occupying—how much he made by his pigs, his cows, milk and potatoes.'

So far from 'assimilating the Irish registration system to that of England,' the bill did exactly the reverse. In the English system the revising barristers are appointed by the judges; by this bill it was proposed to vest the appointment of Irish revising barristers in the lord lieutenant. 'The

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 1331.
[2] *Ibid.* 1334.
[3] *Fifty Years of the House of Lords*, pp. 17, 50. See also *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, appendix, 260, 264.
[4] P. 17.
[5] Hansard's *Parl. Debates*, third series, vol. xxx. 942-3.

clause,' said Colonel Percival [1] (vesting the appointment in the government), 'appears to me to be a perfect job, placing at the disposal of the government eleven places of 800*l.* a year each.'

'It is clear,' said Mr. Serjeant Jackson,[2] 'that the revising barristers will be, in fact, the friends and partisans of the administration which appointed them.' The learned serjeant indignantly vindicated the judges of Ireland from the aspersions—'the foul aspersions'—cast upon them by O'Connell, the chief advocate of the bill.[3]

This prodigious bill, part of the price paid by the Melbourne ministry for the support of O'Connell, was introduced in the House of Commons three weeks before the prorogation of parliament,[4] and the second reading was moved in the House of Lords a week before the prorogation.[5]

Is it surprising that 'the Peers threw it out [6] by a majority of exactly three to one'?[7]

The Ballot defeated in the Commons.—1833 *to* 1837

'Year after year,' says Mr. Bowen-Graves,[8] 'the ballot, the first step in the path of electoral regeneration, was met in the House of Commons with unmixed contempt.'

'On the first introduction of the question in the first reformed parliament,' says Mr. Molesworth, 'the proposal was rejected by 211 votes, against 106 in favour of Mr. Grote's motion.'[9]

Mr. Gladstone's name will be found amongst the 'Noes.'[10]

In 1835 Mr. Grote's motion was lost by a majority of 173—317 votes to 144.[11]

In 1836 Mr. Grote's motion was again defeated.[12] Mr. Gladstone's name appears in the list of Mr. Grote's opponents.[13]

In 1837 Mr. Grote's motion was defeated by 265 votes to

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 765.
[2] *Ibid.* 766–7. [3] *Ibid.* 705. [4] *Ibid.* 699. [5] *Ibid.* 1250.
[6] *Ibid.* 1263. [7] *Fifty Years of the House of Lords*, p. 17; 81 to 27.
[8] The *Fortnightly Review* for February, 1873 ('Forty Years of the House of Lords'), p. 233.
[9] *History of England*, i. 263 (1833); Hansard's *Parl. Debates*, third series, vol. xvii. 667. [10] *Ibid.* 669. [11] *Ibid.* vol. xxviii. 471.
[12] By 139 votes to 88; *ibid.* vol. xxxiv. 837. [13] *Ibid.* 838.

153; majority, 112.[1] Mr. Gladstone's name again appears in the list of Mr. Grote's opponents.[2]

This completes the parliamentary record of the 'unmixed contempt' of the House of Commons for the ballot in the reign of King William IV.

Corrupt Practices

Mr. Spender,[3] of the 'Liberal Publication Department,' makes a detestable suggestion, as untruthful as it is detestable, that[4] perhaps the most striking case of the enmity of the Lords to the new order in Great Britain is shown in their deliberate attempts to wreck democratic government by encouraging political corruption.'

'The most glaring cases of corruption reported,' as to 'the first general election after the Reform Act,' 'were,' says the author of 'Fifty Years of the House of Lords,'[4] 'those of Warwick, Stafford, Hertford and Carrickfergus. The House of Commons sent up bills to the House of Lords disfranchising the corrupt boroughs. The House of Lords rejected them.' 'Gross bribery,' he repeats,[5] 'was proved to have prevailed in the peccant boroughs.'

Proved? How? 'The evidence,' said Lord Lyndhurst,[6] 'before a committee of the House of Commons is not given on oath, and reports founded on such evidence cannot be sustained when the witnesses are examined on oath before your lordships. The whole is an *ex parte* proceeding. The accused are never called upon—never have an opportunity of meeting the charge or of cross-examining the witnesses.'

'Grievous it will be for the subjects of this country,' said the Duke of Wellington,[7] 'if bills of pains and penalties are to be allowed to pass this House, before evidence has been heard at your bar to prove the guilt of the party against whom the bill is directed.'

Let us take the bills *seriatim*.

[1] Hansard's *Parl. Debates*, third series, vol. xxxvii. 67. [2] *Ibid.* 69.
[3] *The House of Lords, who they are and what they have done*, pp. 20, 21. [4] P. 33. [5] P. 34.
[6] Hansard's *Parl. Debates*, third series, vol. xxxii. 1065, 1066.
[7] *Ibid.* 1070.

1. Warwick. This borough had a constituency of 1,300 electors. Of these twenty-one were reported to have taken bribes. The bill sent up to the Lords proposed to disfranchise the whole borough on account of the acceptance of bribes by these twenty-one electors![1] As Mr. Goulbourn pointed out,[2] 'the proper plan would have been not to visit the sins of a few on all, but to disqualify the corrupt.'

The House of Lords decided to hear witnesses on oath at the bar,[3] and for weeks and weeks devoted themselves, with exemplary patience, to the investigation.

So slender was the evidence offered, though an immense number of witnesses were examined, and counsel were heard at great length, that Lord Brougham (the chancellor, at the commencement of the inquiry, of Earl Grey's ministry, and at the close of it, of Viscount Melbourne's) himself moved that the bill be read a second time that day six months,[4] which was agreed to *nem. con.*

2. Stafford. In 1836 a most elaborate investigation was made by the Lords with regard to this borough. They decided to hear evidence on oath at the bar, before reading the bill ('sent up to them by the Commons'[5]) a second time.[6] The investigation lasted from the end of May to July 27.[7] On July 29 the Marquess of Clanricarde moved the second reading again,[8] and the Liberal Lord Chancellor, Lord Cottenham, said[9]:—

'Looking at the result of the evidence, it did appear to him that a sufficient case had not been made out for the passing of the bill. The bill before their lordships raised this question—whether or not the whole town should be disfranchised? And to that he was prepared to give a negative.'

[1] See Mr. Baring's speech in Hansard's *Parl. Debates*, third series, vol. xxi. 842.

[2] Hansard's *Parl. Debates*, third series, vol. xxi. 1181.

[3] The House of Commons at this time had no power to swear witnesses.

[4] Hansard's *Parl. Debates*, third series, vol. xxv. 938, 939 (August 5, 1834). See also vol. xxii. 358 (Earl Grey); vol. xxiii. 103, 778, 858, 950, 1098, 1272, 1359; vol. xxiv. 2, 491; and vol. xxv. 8, 1230.

[5] See *Fifty Years of the House of Lords*, pp. 33, 34, 35.

[6] Hansard's *Parl. Debates*, third series, vol. xxxii. 1063–1079 (April 15, 1836).

[7] *Lords' Journals*, vol. lxviii.

[8] Hansard's *Parl. Debates*, third series, vol. xxxv. 650.

[9] *Ibid.* 655–6.

The Liberal prime minister, Viscount Melbourne, said he would not vote for the second reading. The Duke of Wellington, on the other hand, thought the bill ought to be read a second time. He was over-ruled, however, and the bill was 'put off for six months.'

The Liberal government thus saved Stafford.[1] May not the reason have been, as the Marquess of Clanricarde hinted, that 'the persons professing Liberal principles were the principal delinquents'?[2]

3. Hertford. The object of the bill was to disfranchise 'the old inhabitants householders,' as being 'the most determined supporters of the bribery,' leaving the new ten-pound voters and *the freemen*, 'who were scarcely tainted with corruption,' untouched.[3]

What an eloquent commentary this is upon the ridiculous aspersions cast by the author of 'Fifty Years of the House of Lords' upon the freemen! 'The very fact,' he says, 'of saving the freemen from political extinction' is to 'inoculate the new constituencies with corruption.'[4]

The bill was certainly not rejected by the Lords.

4. Carrickfergus. The bill for disenfranchising Carrickfergus was brought forward by Daniel O'Connell, who, doubtless, looked with complacency on obliterating a constituency opposed to him. It was not 'rejected' by the Lords. It does not appear to have reached them.

'The House of Commons sent up to the House of Lords a drastic Corrupt Practices Bill. The House of Lords consented to read it a second time, on condition that it was referred to a select committee. By this select committee it was completely remodelled, so as to make it almost a new measure, said Lord John Russell.'[5]

[1] The author of *Fifty Years of the House of Lords* (p. 35) says 'the House of Commons reckoned without the Peers.' They reckoned without the Liberal government.

[2] See Hansard's *Parl. Debates*, third series, vol. xxxv. 650–657.

[3] *Ibid.* vol. xxii. 84, Report of the House of Commons Committee.

[4] P. 33. Mr. Spender says the bill was one 'to disfranchise *the freemen* of Hertford!' *House of Lords*, p. 21.

[5] *Ibid.* p. 34, and see *The House of Lords; a Retrospect and a Forecast*, appendix, p. 264.

It is quite true that Lord John Russell said that 'the amendments which had been made by the Lords in this bill were of so extensive a character as almost to render it entirely a new measure'; but he did not say that he disagreed with them. On the contrary, he said that, 'although the proposal was so totally new, he did not think there were sufficient objections to the proposal, in itself, to prevent the House agreeing to make an experiment of such a tribunal,' as the Lords suggested. 'He did not think that a court constituted of seven members of that House and five of the Lords would form a bad or unfair tribunal for the trial of bribery cases.' [1]

I cannot find that any member, except Daniel O'Connell, 'naturally resented the claim of the Peers to interfere with the trial of Election Petitions.' [2] The ground on which Mr. Warburton moved that the Lords' amendments be taken into consideration 'that day six months' was solely that on August 7 the House could not give them adequate consideration.[3]

In view of the course which the Legislature afterwards took, with regard to the trial of election petitions, the speech of Lord John Russell, with reference to the Lords' amendments, is delightful reading [4]:—'There was a change which had been proposed in the bill, that one of the judges should preside in that court. He would have greatly wished that the House of Lords had not chosen one of the judges of the land for that purpose. It was proposed that the judge should have the sole power of admitting or rejecting evidence—a proposal which he thought must have the effect of restricting the inquiries of parliament within improper limits, and subjecting them to rules to which they had never submitted, and which might prove extremely injurious, as far as the prevention of bribery and corruption was concerned. He really believed, however, that those amendments had been made in a spirit of fairness, with the view, if possible, of obtaining some tribunal on which all parties would agree.'

[1] Hansard's *Parl. Debates*, third series, vol. xxv. 1019, 1020.
[2] *Fifty Years of the House of Lords*, p. 34.
[3] Hansard's *Parl. Debates*, third series, vol. xxv. 1023.
[4] *Ibid.* 1020, 1021, 1023.

Daniel O'Connell said[1]:—'To the appointment of the judge of one of the Courts of Record to preside over the proposed tribunal he had a great objection. He did not wish to see a judge mingling legislative (!)[2] with his judicial functions. And, with respect to evidence, a judge would have his legal notions constantly outraged by having that kind of evidence brought before him to prove cases of bribery at elections, which he would not listen to in one of the courts of Westminster Hall. He put it to the House whether it would be right to drag the pure ermine of the judicial robe through so much filth?'

The English Municipal Corporations Act, 1835
5 & 6 *William IV. cap.* 16

The author of 'Fifty Years of the House of Lords' devotes a moiety of his sixth chapter to the English Municipal Corporations Act of 1835.[3]

He gives a travesty of the Lords' amendments, but he rightly says:—'The crisis was staved off by a series of mutual compromises.'[4] Each House abandoned about one-half of its proposals.

The House of Lords were fully justified in proposing to preserve the rights of freemen, as Sir William Follett's amendment in favour of the preservation of these rights was only defeated in the House of Commons by 278 votes to 232.[5]

Sir Robert Peel, when he sought to attach a qualification to town councillors, was only defeated in the House of Commons by 267 votes to 204.[6]

The 'great advantages' which the Lords 'secured by their amendments' were summarised by Lord Lyndhurst, on the consideration of the Commons' amendments, in a speech, which Lord Brougham characterised as 'able and judicious,' and to which I must refer the reader.[7]

[1] Hansard's *Parl. Debates*, third series, vol. xxv. 1024, 1025.
[2] Dan must have been rather mixed!
[3] Pp. 46–50. He calls it '*The Municipal Reform Act of* 1836' (p. 46)—a slip of the pen, no doubt.
[4] P. 47.
[5] Hansard's *Parl. Debates*, third series, vol. xxviii. 1069–1112.
[6] *Ibid.* vol. xxix. 99–120.
[7] *Ibid* vol. xxx. 1341–1352.

'The House of Lords,' says the author of 'Fifty Years,'[1] 'has hardly created anything since the Reform Act of 1832 but the alderman'; and yet he seems to begrudge them this solitary piece (?) of 'constructive legislation.' 'The House of Lords enabled the alderman to secure to this day in Liverpool and elsewhere, a Conservative majority in councils.' But parliament, in 1888, vindicated the action of the Lords in 1835 by extending the aldermanic principle to county councils; and may we not venture to set off against Liverpool the London County Council aldermen, who, with very few exceptions, are 'Progressists'?

Mr. Roebuck vainly implored the ministers to 'reject outright,' not 'the bill as it emerged from the Upper House,' as erroneously stated by the author of 'Fifty Years of the House of Lords,'[2] but 'the Lords' amendments.'[3]

When reading Mr. Thomas Attwood's speech[4] one might almost fancy one was perusing a speech of Mr. Labouchere or of Mr. John Burns!

'It had been observed at a meeting in the country, which had been attended by 10,000 individuals, that under the present march of education (!) and diffusion of knowledge (!), the time would soon approach when the country would need neither House of Lords nor a king.'

O'Connell made a violent speech,[5] a specimen of which is embalmed in the sixth chapter of the 'small work.'[6]

It is not surprising that Mr. Gladstone turned upon the hon. members, who, he said, 'threatened to overawe the monarchy, and that other branch of the legislature,' 'which was as independent as this branch of the legislature, and as capable of exercising a sound and useful judgment,'[7] and he charged them with having 'advanced atrocious and dangerous doctrines, tending to upset all freedom and independence in the other branch of the legislature, which had as sound constitutional a right of judgment as that House.'[8] He described the House of Lords as 'the original barrier between the

[1] Pp. 46, 48, 49. [2] P. 48.
[3] Hansard's *Parl. Debates*, third series, vol. xxx. 1168. [4] *Ibid.* 830.
[5] *Ibid.* 1171. [6] Pp. 49, 50. [7] *Ibid.* 824. [8] *Ibid.* 826.

usurpations of the Crown and the licentiousness of the people,' and he referred to the supporters of the Government as 'sections of various parties that whirled the Government round within the eddies of an all-absorbing agitation.' [1]

O'Connell sharply retorted by saying that he looked upon Mr. Gladstone's 'argument' with 'much contempt.' [2]

The 'small work' refers [3] to O'Connell's 'haranguing vast assemblies on the evils of the House of Lords.' With what effect? 'O'Connell made a progress,' says Mr. Walpole, 'through the North of England, attacking, in town after town, the conduct of the Peers; but this agitation did not do much harm to the Lords. On the contrary, respectable people were shocked at the violence of his language, and were disposed, from a mere love of fair play, to rally to the support of men who were unfairly attacked. The great agitator had, in fact, overshot his mark and created a reaction by the violence of his own blow.' [4]

'The Lords "cushioned" (to use O'Connell's phrase) the Municipal Corporations Act Amendment Bill, which provided a remedy for the maladministration of charitable trusts.' [5]

This is quite contrary to fact. Lord John Russell slaughtered his own bill on the floor of the House of Commons by moving that the Lords' amendments should be considered that day three months! [6]

The course which he took was all the more extraordinary as all sorts of confusion existed in boroughs under the much-belauded English Municipal Corporations Act of 1835. *Quo warrantos* were actually out, on the ground of officers holding situations in corporations, not being legally entitled to them.[7]

The question of 'charitable trusts' was quite a subordinate one. The lord chancellor explained that the charitable funds of the 'maladministration' of which the writer of the 'small work' complains, 'should be paid over to persons appointed

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 824. [2] *Ibid.* 826
[3] P. 50. [4] Walpole's *History of England*, vol. iii. pp. 331, 332
[5] *Fifty Years of the House of Lords*, p. 51.
[6] Hansard's *Parl. Debates*, third series, vol. xxxv. 1137.
[7] See, for example, Hansard's *Parl. Debates*, third series, vol. xxxii. 516, 752, 754, 760.

by each corporation to receive them.' [1] The view of the Lords was that 'the administration of the charitable trusts would then be influenced by party considerations.' [2]

Poole Corporation

'In 1836 the Lords refused to sanction the Poole Corporation Re-election Bill, which provided for the re-election of the Poole Corporation, on account of the gross fraud which characterised the first election in that borough.' [3]

The Solicitor-General,[4] when the bill was before the Commons, 'could not but express his objection to the bill, because it involved a principle which he thought it would be very dangerous to admit—the interference of the legislature in a question which was still awaiting the judgment of a proper tribunal—a court of law.'

The then Marquess of Salisbury, when the bill was before the Lords, said [5] that 'his mind was most strongly made up against this bill.' Their Lordships' House, itself the supreme court of appeal, would, if they agreed to this bill, be interfering with the proceedings of the courts below.

Lord Lyndhurst pointed out [6] that 'whenever a measure of disfranchisement [7] was proposed, it was the established rule that a case should be made out by evidence at their Lordships' bar. Their Lordships never proceeded, and never would proceed, on the evidence given before a committee of the House of Commons.'

Lord Redesdale said that 'there was not to be found in the records of parliament a precedent for such a measure as that which was now proposed, and which appeared to him to be of a most dangerous character. It was introduced for party purposes, it was founded on party spite, and sought nothing else but party triumph.' [8]

[1] Hansard's *Parl. Debates*, third series, vol. xxxii. 755.
[2] See per Lord Stormount in the House of Commons, *ibid.* vol. xxxv. 1040.
[3] *Fifty Years of the House of Lords*, p. 51. Mr. Spalding does not condescend to notice it.
[4] Mr. Rolfe, afterwards Lord Cranworth. Hansard's *Parl. Debates*, third series, vol. xxxiii. 834. [5] *Ibid.* vol. xxxv. 756.
[6] *Ibid.* 753. [7] The bill proposed to annul the previous election.
[8] Hansard's *Parl. Debates*, third series, vol. xxxv, 752.

The heat shown in both Houses whenever the bill was before them amply bore out this view.[1]

Church Trusts

In reference to 'bills for the more effective management of charitable trusts,' 'the action of the Lords seems chiefly to have been prompted by excessive jealousy of nonconformity. For instance, Lord Lyndhurst complacently justified the rejection of the Charitable Trustees Bill of 1836, because it would have admitted dissenters, if members of town councils, to a share in the management of funds hitherto exclusively in the hands of churchmen.'[2]

'The case which I have put,' said Lord Lyndhurst, by way of explanation,[3] 'with respect to the interference of dissenters, applies, not to charities intended for the general benefit of a town, but specially dedicated to purposes connected with the Church of England.'

Why, even the much-abused Charity Commission, with all its secularising tendencies, has introduced a proviso into its 'schemes' that 'charities specially dedicated to purposes connected with the Church of England' should continue to be 'in the hands of churchmen.'

Only last session the same principle that Lord Lyndhurst contended for was applied in the Parochial Councils Bill by Mr. Gladstone's Government!

Irish Municipal Corporations Bills

In 1834 Daniel O'Connell brought forward his motion for the Repeal of the Union.

'Let her own Parliament,' he said, 'be restored to Ireland. The British Parliament has never been competent to legislate for Ireland! The Union was carried by a train of unparalleled crimes. The financial and legislative terms on which it proceeded were impolitic and unjust.'[4]

[1] See Hansard's *Parl. Debates*, third series, vol. xxxi. 951; vol. xxxv. 753.
[2] *Fifty Years of the House of Lords*, p. 52.
[3] Hansard's *Parl. Debates*, third series, vol. xxxv. 900.
[4] *Annual Register for* 1834 ('History'), p. 23.

One seems to have heard language very like this in recent times. The expressions used would be equally applicable to the Repeal of the Union or to Home Rule. And this language was used before the Irish Municipal Corporations Bill was introduced, before the English Municipal Corporations Bill was passed! What absurdity, then, to say, as Mr. Spalding does,[1] that 'the refusal of a generous measure of local-government for Ireland has resulted in the demand for Home Rule!'

O'Connell was met by an address from both Houses of Parliament to the king, declaring their fixed determination to maintain the Union, which the king graciously acknowledged.[2]

'In 1835 the Irish Municipal Reform Bill,' says the author of 'Fifty Years of the House of Lords,'[3] 'passed through all its stages in the Commons. It failed to make its way through the Lords.'

The bill was only introduced in the House of Commons on the last day of July, 1835,[4] when, as Colonel Percival said, the House was exhausted, and most members had left town.[5] Mr. Shiel said[6] 'it was true that the House was nearly deserted.'

On August 12 the bill was read a second time.[7] On August 13 it went through committee.[8] On August 17 it was read a third time and passed.[9] On September 10 parliament was prorogued.

Is it surprising that the Irish Municipal Reform Bill 'failed to make its way through the Lords'? I am glad that Mr. Spalding has not scheduled this bill. 'The Government,' he says,[10] 'allowed it to drop.'

'In 1836,' says the 'small work,'[11] 'the Commons again passed the Irish Municipal Reform Bill through all its stages, only to have it mutilated out of all recognition by the Lords.'

Well, if the Commons 'passed the bill through all its stages,' small thanks to Mr. Gladstone. A reference to Hansard

[1] *The House of Lords; a Retrospect and a Forecast*, p. 206.

[2] Carried in the Commons by 523 to 38, majority 485 (*Annual Register* for 1834, p. 34; Hansard's *Parl. Debates*, third series, vol. xxiii. 286, 294, 306, 367), not unlike the recent division in the Lords.

[3] P. 20. [4] Hansard's *Parl. Debates*, third series, vol. xxix. 1288.

[5] *Ibid.* 1324. [6] *Ibid.* 1325. [7] *Ibid.* vol. xxx. 400. [8] *Ibid.* 476. *Ibid.* 618. [10] *House of Lords*, p. 188. [11] P. 20

will show that he did his best to destroy it! His name will be found in the division lists amongst those of the enemies of the bill. He voted in favour of the instruction of Lord Francis Egerton on going into committee, which, if successful, must have completely changed the bill;[1] and he voted against the third reading of the bill.[2]

The bill was read a second time, without a division, in the House of Lords[3] on April 18, 1836.

On the motion for going into committee on the bill Lord Fitzgerald and Vesci moved an instruction, word for word the same as the one moved by Lord Francis Egerton, for which Mr. Gladstone had voted in the House of Commons.[4] This instruction was carried in the Lords by a majority of 84—208 to 119.[5]

The 'small work' tells us[6] that '106 out of its 140 clauses were struck out.' These words are taken from a speech of Lord John Russell's on the consideration of the Lords' amendments;[7] but the amendments were all consequent upon the adoption of the instruction, for which Mr. Gladstone had voted in the Commons; they followed the adoption of that instruction as a matter of course.[8]

Lord John Russell moved[9] to disagree with the Lords' amendments to the fourth clause of the bill. A very long debate, protracted over several days, ensued. When, at length, the Lords' amendments were rejected, Mr. Gladstone voted in favour of them.[10]

The Lords decided by a majority of nearly a hundred—220 to 123—not to agree with the Commons' amendments to their amendments.[11] Lord John Russell moved that 'the Lords' amendments be taken into consideration that day three months.'[12] This was carried *nem. con.*[13]

[1] Hansard's *Parl. Debates*, third series, vol. xxxii. 119.
[2] *Ibid.* 747, 750.
[3] *Ibid.* 1166.
[4] *Ibid.* vol. xxxiii. 233–260.
[5] *Ibid.* 306.
[6] P. 20.
[7] *Ibid.* vol. xxxiv. 218.
[8] See per Lord Lyndhurst, Hansard's *Parl. Debates*, third series, vol. xxxiii. 704, 733.
[9] *Ibid.* vol. xxxiv. 237.
[10] *Ibid.* 405, 408.
[11] *Ibid.* 963.
[12] *Ibid.* 1077.
[13] *Ibid.* 1107. The attempt of Mr. Smith O'Brien to induce the House to express their 'regret' at the conduct of the Lords speedily collapsed. *Ibid.* 1281.

'In 1837, for a third time,' says the author of 'Fifty Years of the House of Lords,' 'the Commons sent the Irish Municipal Corporations Bill up to the Lords.'[1]

Mr. Gladstone again voted for Lord Francis Egerton's 'instruction, on going into committee on the bill.'[2] Mr. Gladstone again voted against the third reading of the bill, which was carried by a reduced majority.[3]

The House of Lords accepted the principle of the bill. The Duke of Wellington said[4] 'it was the general opinion of the members of their Lordships' House that it was proper and expedient to put an end to these corporations,' and, therefore, the bill was read a second time *nem. con.*[5] The speech from the throne, however, which Lord Melbourne moved should be read,[6] so far as it related to Ireland, announced that three bills would be introduced to 'improve the condition of Ireland,' namely, a Tithe Bill and a Poor Law Amendment Bill, as well as the Municipal Corporations Bill, and the Upper House insisted on seeing all three bills before proceeding any further with one of them, and this is the reason why 'the Lords adjourned its consideration from May to June, and then again from June to July.'[7] The ministry of the day should have done as Mr. Gladstone did in 1884—enabled the House of Lords to see the whole of the measures before assenting to one of them. Instead of this, the Tithes (Ireland) Bill was only read a second time in the House of Commons on the very day[8] fixed for the committee stage of the Municipal Corporations (Ireland) Bill in the House of Lords, and never went any further. It was objected to by some Irish Radicals, led by Mr. Sharman Crawford, 'as not going far enough';[9] and the Poor Laws (Ireland) Bill stuck in committee in the House of Commons on June 7,[10] and never emerged from it!

On June 29 Lord Melbourne stated in the House of Lords

[1] P. 20. [2] Hansard's *Parl. Debates*, third series, vol. xxxvi. 657, 958.
[3] 'Ayes' 286, 'Noes' 232, majority 54. *Ibid.* vol. xxxvii. 997, 1000.
[4] *Ibid.* vol. xxxviii. 550. [5] *Ibid.* 277. [6] *Ibid.* 260.
[7] *Fifty Years of the House of Lords*, p. 20. See Hansard's *Parl. Debates*, third series, vol. xxxviii. 556, 599, 1321, 1329.
[8] June 9, 1837. See Hansard's *Parl. Debates*, third series, vol. xxxviii. 1379, [9] *Ibid.* 1370, [10] *Ibid.* 1222.

that he 'had no intention of pressing the Irish Municipal Corporations Bill further.' 'He might give the same answer with regard to the Irish Tithe Bill and the Irish Poor Law Bill.' [1]

The Duke of Wellington said [2] that 'it was his anxious wish to put an end to the discussion with respect to all these bills, by bringing them to an amicable termination.' These words were cited next year by Sir Robert Peel.[3]

The Church Temporalities Act, 1833 (3 & 4 *Will. IV. cap.* 37)

'In 1833,' observes the author of 'Fifty Years of the House of Lords,' [4] 'the Government of the day passed the Church Temporalities Act; but, instead of appropriating the surplus revenues of the alien establishment to the furtherance of purposes approved by the majority of the nation, the appropriation clause was abandoned from fear of the Lords.'

'The Irish Church Regulation Act of 1833,' says Mr. Spalding,[5] 'had originally contained appropriation clauses. They were withdrawn because the Government feared that the whole scheme would be wrecked in the House of Lords if they were retained.' [6]

The 'appropriation clauses' contained in this bill differed *toto cœlo* from those contained in some of the subsequently-introduced Irish Tithe Bills. The 'Annual Register,' summarising the discussion,[7] says 'that none of the ministers ventured to maintain that they intended to take the property of the Church for "State purposes."'

It was calculated that 3,000,000*l.*[8] would be available from Church property owing to giving the Bishops power, by act of parliament, to grant leases in perpetuity, instead of for twenty-one years.

Mr. Stanley (afterwards Earl of Derby) agreed with Lord

[1] Hansard's *Parl. Debates*, third series, vol. xxxviii. 1682.
[2] *Ibid.* [3] *Ibid.* vol. xliii. 435. [4] P. 26.
[5] *House of Lords*, p. 187, n. (3).
[6] '1833. Irish Church Regulation Act passed by the Commons, mutilated by the Lords.' *Ibid.* appendix, pp. 261, 264.
[7] *Annual Register* for 1833, p. 104. [8] *Ibid.* p. 100.

Althorp, that the State was entitled to the benefit of any improvement that might be made by act of parliament in Irish Church property. Sir Robert Peel, on the other hand, thought that the improved value, thus obtained by the assistance of the legislature, should, when realised, belong to the Irish Church.

In committee on the bill in the House of Commons, Mr. Stanley, 'in a spirit of conciliation,' moved the omission of clause 147, the (so-called) appropriation clause.[1] He made no mention in doing so of that 'fear of the Lords' referred to by both writers. The bill threw the liability for Church cess (corresponding with English Church rates) on the Irish beneficed clergy, and abolished ten bishoprics. Even after the removal of the appropriation clause Mr. Gladstone voted against the bill on the question that 'the bill do pass.'[2]

'*I am prepared*,' he said, '*to defend the Irish Church.* I contend that since the Union it has done all that human power could do. I contend that in a social point of view it is no slight advantage to have scattered over that country a number of men who are gentlemen by education, and more especially, who are Christians by profession. The existence of such a body of men in that country is also of no slight importance as affording a connecting link between it and England. I oppose this bill because I think it will tend to desecrate the Established Church, and the desecration of a church must be productive of the most serious injury to a country. It is not the proper way to maintain the Church to proceed by laying further burthens on the body of the clergy, who, God knows, are already not overburthened with money, as is done by this measure.'[3]

The Lords sanctioned by a very narrow majority—84 to 82—an amendment moved by the Archbishop of Canterbury to the clause, which provided that the commissioners under the measure might suspend the appointment of a clerk to any

[1] Hansard's *Parl. Debates*, third series, vol. xviii. 1073, 1074.
[2] 'Ayes' 274, 'Noes' 94; majority 180. Mr. Gladstone's name appears among the 'Noes.' *Ibid.* vol. xix. 301.
[3] *Ibid.* 293, 294.

benefice where Divine Worship should not have been celebrated for three years. The archbishop's amendment provided [1] that the 'tithes and profits of the benefice' were to be applied by the commissioners, in the first place, to the building or repairing of the church and glebe house of the said benefice, if necessary.

Mr. Walpole [2] ridicules this amendment which 'pointed to the possible erection of Protestant churches in parishes where there were no Protestants.'

Yet the archbishop distinctly guarded himself against such an absurdity:—'If there was no Protestant inhabitant,' he said, 'then the income of the benefice might be handed over to the general fund.'

The amendment which seems so ridiculous to Mr. Walpole (and, I may add, to his disciple, Mr. Spalding,[3] who so frequently sits at his feet) was gravely discussed both by Liberal and Conservative Peers in the House of Lords.

The Bishop of Exeter said the omission of Divine Service had only occurred in parishes where there were no churches.[4]

Earl Grey, the then prime minister, said [5] that the suspension of Divine Service arose sometimes from there being no building fit for a place of worship, and occasionally from terror and intimidation; and he pointed out [6] that the amendment merely gave the commissioners a discretion as to the disposal of the funds of the suspended benefice. The amendment did not effect any alteration in the principle of the bill. He intimated his intention of proposing amendments to the clause himself. Earl Grey's amendments authorise the appointment of an officiating minister to any of the suspended benefices, or the occasional assistance of the incumbent of an adjoining parish.

Irish Tithes Bills

The question of Irish tithes was first brought under the notice of the House of Commons in 1834 by petitions which

[1] Hansard's *Parl. Debates*, third series, vol. xix. 1227–32.
[2] *History of England*, vol. iii. chap. xiii. p. 163.
[3] *House of Lords*, chap. xvii. pp. 200, 201.
[4] Hansard's *Parl. Debates*, third series, vol. xix. 1225.
[5] *Ibid.* 1230. [6] *Ibid.* vol. xx. 1–4.

Daniel O'Connell presented for the abolition of the tithe system and the repeal of the Union.[1]

The association of these two objects in the same petition speaks volumes for the quarter from whence the agitation came.

The king's speech referred to both of these questions, one passage recommending 'a final adjustment of tithes' in Ireland, 'without injury to the rights and property of any class of my subjects,' or 'to any institution in Church or State,' the other expressing 'my fixed and unalterable resolution, under the blessing of Divine Providence, to maintain inviolate the legislative Union by all means in my power.'[2]

O'Connell moved the omission of the last paragraph from the address in reply to the Queen's speech; but he was beaten by 189 to 23.[3] He moved to inquire into the Union, and was beaten by 523 to 38.[4] Fifty-seven Irish members voted in the majority. And this is the man who is constantly cited with approbation by the author of 'Fifty Years of the House of Lords,' as if he alone voiced the opinions of Ireland![5]

'In 1834,' says the author of 'Fifty Years of the House of Lords,'[6] 'the Commons, by a majority of 360 to 99, passed a "Tithe Abatement Bill."'

The name is a bizarre one, which I find is copied from Mr. F. Bowen-Graves' 'Forty Years of the House of Lords.'[7] The bill is The Tithes (Ireland) Bill, 1834. The majority of '360 to 99' was not upon the second reading, or even upon the third reading of the bill. It was on an amendment of Daniel O'Connell's to the motion that 'the Speaker leave the chair'! Dan's amendment pronounced in favour of the appropriation of the 'surplus funds' of the Irish Church 'to the purposes of public utility.'[8] This is a resolution of which I should have expected the author of 'Fifty Years of the House of Lords' to warmly approve. Yet here we have him actually gloating over

[1] Hansard's *Parl. Debates*, third series, vol. xxi. 413. [2] *Ibid.* 4.
[3] *Ibid.* 108. [4] *Ibid.* vol. xxiii. 286, 287.
[5] 'O'Connell declared'; 'O'Connell stated'; 'the cry of O'Connell,' &c. &c. [6] P. 26.
[7] *Fortnightly Review* for January, 1873, p. 93.
[8] Hansard's *Parl. Debates*, third series, vol. xxiv. 747, 805.

O'Connell's defeat! In the very next sentence he cites him with approbation:—

'O'Connell declared on its third reading that the bill "would form a new epoch in the history of the government of Ireland.[1] This was the first great step towards a conciliatory system in Ireland. He hoped no attempt would be made to blast this first step towards the pacification of Ireland."'[2]

How was it that O'Connell, who voted against the Tithes (Ireland) Bill on the second reading—(the then bill he 'felt bound,' he said, 'to oppose'[3])—was now singing its praises? Because the bill, during its passage through the House of Commons, was greatly changed for the worse; and that mainly through his own instrumentality. His following on the amendment, that the House resolve itself into committee on the bill that day six months, sank to fourteen.[4] 'This,' says Mr. Walpole, 'was one of the most severe defeats which O'Connell had yet encountered.'[5] But 'the greatest victory which he had ever gained' was in store for him. The very next night he carried an amendment against the Liberal Government, which made the proposal that entitled the bill to be called a 'Tithe Abatement Bill.' 'He would propose that, in place of all the tithes now claimed under the composition, there should be substituted three-fifths of the whole amount. That would give an immediate bonus of 40 per cent. to all.'[6] Two-fifths was to be at once abandoned! This, no doubt, is why Mr. Bowen-Graves, and his copyist, the author of 'Fifty Years of the House of Lords,' call it a 'Tithe Abatement Bill.'

O'Connell's amendment was carried by a majority of 49; 82 to 33.[7] Lord Althorp, the leader of the House of Commons, voted in the minority. In this form the bill went up to the House of Lords.

[1] O'Connell said: 'In the history of the *English* government of Ireland *during a period of* 670 *years!*'

[2] What O'Connell said was: 'He hoped that, at the end of more than *six centuries* of misgovernment, no attempt would be made,' &c. See the speech in full, Hansard's *Parl. Debates*, third series, vol. xxv. 991–3.

[3] *Ibid.* vol. xxiii. 654.

[4] 154 to 14, majority 140; *ibid.* vol. xxv. 747.

[5] *History of England*, vol. iii. chap. xiii. p. 265.

[6] Hansard's *Parl. Debates*, third series, vol. xxv. 757. [7] *Ibid.* 771.

Is it surprising that the bill, thus 'mutilated' by O'Connell, was 'summarily rejected'[1] by the Lords? Peer after peer rose in his place and said that he approved of the measure, as originally introduced, but the measure in its then shape was 'founded on diametrically opposite principles.'[2] But the bill, as originally introduced, had one vital defect in the eyes of O'Connell; 'it would have made the Church of Ireland strong,' and his object was to weaken it.

'The next year,' (1835) 'the Tithe Bill was again sent up to the Lords. They struck out the clause appropriating a portion of the ecclesiastical revenues to national purposes, thereby securing the abandonment of the bill.'[3]

'The Whigs,' says Mr. Spalding,[4] 'resolved that any scheme for tithe commutation, brought forward by them, should provide for the appointment of a certain amount of the commuted tithe to objects of national advantage. But the Lords were equally determined that no such application of ecclesiastical funds should be made; and in 1835 and 1836 they rejected appropriation clauses in Tithe Commutation Bills sent up from the House of Commons, thereby securing the abandonment of the bills.'

In the schedule I find, 'Irish Tithe Bill mutilated and dropped.'[5]

It must be remembered that at the commencement of the year 1835 Sir Robert Peel and a Conservative ministry were in power. The king's speech declared that, 'Among the first subjects in point of urgency is the state of the tithe question in Ireland; and the means of effecting an equitable and final adjustment of it.'

A factious opposition was offered to the introduction of this measure, but, happily, the opposition was unsuccessful. It was defeated by a majority of 15—218 to 198.[6]

[1] This expression is copied from Mr. Bowen-Graves, *Fortnightly Review* for January, 1873, p. 94.

[2] Hansard's *Parl. Debates*, vol. xxv. 1150-1203.

[3] *Fifty Years of the House of Lords*, p. 26. [4] *House of Lords*, p. 187.

[5] *House of Lords*, appendix, p. 264. No such plan was contained in the bill of the Liberal Government in 1834, and O'Connell, as we have seen, was beaten by a majority of 261 when he brought it forward.

[6] Hansard's *Parl. Debates*, third series, vol. xxvii. 83.

Sir Henry Hardinge, then Chief Secretary for Ireland, moved, in committee of the whole House upon the subject of tithes in Ireland,[1] 'that composition for tithes in Ireland shall be abolished in consideration of an annual rent-charge, to issue out of the lands heretofore subject to payment of such composition; that such rent-charge shall be redeemable, and that the redemption-money shall be invested for the benefit of the persons entitled to such composition.'

'He thought that the immediate imposition of a rent-charge upon the person most interested in the land, thus avoiding all interference with the poor tenant, would be the best. He held in his hand a return of the quantity of land owned by the Protestants and Catholics respectively in 903 benefices in Ireland, from which it appeared that the Protestants owned 10,500,000 acres, and the Catholics only 645,000 acres, so that the number of acres belonging to the Protestant proprietors was, in round numbers, fifteen for every one belonging to Catholics; and the amount of composition paid by Protestants was 19*l.* for every 1*l.* paid by Catholics. He mentioned this circumstance merely for the purpose of showing that a rent-charge upon the land, which many persons considered a harsh proceeding, would fall chiefly upon the persons who, in fact, ought to bear it—namely, the Protestant owners of the land, and not on the Catholic population. He was, of course, well aware that in a legal point of view it mattered not whether the land liable to tithes belonged to Catholics or Protestants, because the burthen was attached to the land, without reference to the religion of the persons to whom it belonged.'

The Rev. W. N. Molesworth, himself a Radical, says, in his 'History of England': [2]—

'A tithe-bill, exhibiting the legislative dexterity, the diligence and statesmanship of the premier, had to be dropped.'

I think I may turn the tables very neatly on the author of 'Fifty Years of the House of Lords' by asking, 'Why had it to be dropped?'

Let the 'Annual Register' answer:—

'The Liberal majority depended on O'Connell; and an

[1] Hansard's *Parl. Debates*, third series, vol. xxvii. 13–22.
[2] Vol. i. p. 339.

attack on the Protestant Church was an indispensable condition of any line of policy which O'Connell would support.'[1] 'The object of the repealers was to pare down the property of the Irish Church to nothing.'[2]

The majority in favour of the Liberal candidate for the speakership was only 10.[3]

The majority in support of the Liberal amendment to the address was only 7. These narrow majorities, says the 'Annual Register' for 1835,[4] 'were secured exclusively by the adhesion of O'Connell and his train.'

When Sir Henry Hardinge introduced Sir Robert Peel's Irish Tithe Bill, Lord John Russell had so far carried out the compact of the Opposition with O'Connell as to give notice[5] of his intention to bring forward a resolution embodying the principle of the appropriation of 'any of the surplus revenues of the Church of Ireland not required for the spiritual care of its members to the religious and moral instruction of all classes of the community.' The resolution was brought forward ten days after the Irish Tithe Bill was introduced.

The motion to go into committee on the resolution was carried by a majority of 33—322 to 289.[6]

A more illogical resolution it was impossible to conceive. Lord John Russell and those who acted with him insisted on negativing Mr. Ward's resolution, declaring the necessity of appropriating to other purposes than those of the Protestant religion the surplus revenues of the Irish Church; and this they did upon the ground that they had themselves issued a commission to inquire into the revenues of the Irish Church; yet Lord John Russell brought forward his resolution, for the purpose of turning out the Conservative Government, although his commission had not yet reported!

[1] *Annual Register* for 1835, p. 160. [2] *Ibid.* for 1833, p. 84.

[3] 316 to 306. Mr. Gladstone voted with the minority.

[4] P. 97. Mr. Gladstone voted with the minority. The *Annual Register* shows that in both divisions there was a clear majority of *British* votes for the Conservatives.

[5] Hansard's *Parl. Debates*, third series, vol. xxvii. 313.

[6] *Ibid.* 770. The *Annual Register* of 1835 shows (p. 221) that there was an *English* majority of 9 *against* the resolution (235 against it, 226 for it).

Moreover, the idea of any 'surplus' was purely hypothetical; Sir Robert Peel had clearly demonstrated that there was no 'surplus.'

Lord John Russell having succeeded in carrying his flimsy resolution, proceeded to put it into a concrete form:—'That it is the opinion of this House that no measure upon the subject of tithes in Ireland can lead to a satisfactory and final adjustment which does not embody the principle contained in the foregoing resolution.'[1] This was carried by a majority of 27,[2] and *Sir Robert Peel resigned.*[3]

This is how the Irish Tithes Bill of the Conservative Government, a sensible and statesmanlike measure, came to be 'dropped.'

The appropriation clause was a mere shabby *ruse* to get rid of the Conservative Government. If sent up to the House of Lords, Sir Robert Peel's bill would certainly have become law, as a similar measure became law in 1838.

It was the bigotry and intolerance of O'Connell which withheld from the Irish peasantry the enormous benefit of a commutation of the tithe for a tithe rent-charge, payable by the Protestant landlords. He wished to keep a rankling sore open, and the bill of the new administration carefully helped him to do so.

In so far as regarded the question of tithe the new bill of the Melbourne Ministry did not differ much from that of Sir Robert Peel; but, as a consequence of the resolution by which the late Government had been unseated, it contained a new set of provisions for appropriating the surplus revenues of the Irish Church, which had not, as yet, formed an original part of any tithe bill.[4] Sir Robert Peel moved an instruction on the motion for committing the new bill, that it be divided into two bills, and was defeated by a majority of 37—319 to 282.[5] Mr. Gladstone voted with the minority.

The House of Lords, by a majority of 97,[6] did what the House of Commons should have done, treated the bill as

[1] Hansard's *Parl. Debates*, third series, vol. xxvii. 880.
[2] *Ibid.* 969—285 to 258. Mr. Gladstone voted with the 'Noes
Ibid. 972. [3] *Ibid.* 974, 980. [4] *Annual Register* for 1835, p. 289.
[5] *Ibid.* p. 308. [6] 138 to 41. *Ibid.* 315.

divided in two, passed the portion of the measure for commuting the tithe—the portion corresponding with Sir Robert Peel's measure—and rejected the appropriation clauses, which were tacked on to it to gratify O'Connell. Lord Melbourne abandoned the bill.

Now what was this appropriation clause, as it appeared in the new Tithe Bill of the administration? It was clearly a scheme of concurrent endowment, so abhorrent to English Nonconformists—a levelling-up of the Roman Catholic Church.[1]

The 'Annual Register' says[2] that, as to 'the sentiments of the great majority of those whose sentiments ought to form, and, in the end, always do form public opinion,' they 'felt convinced that the Peers had done well.' 'The exhibition of their moral power called forth that respect which all men pay, even involuntarily, to the faithful discharge of high and important duties.'

'In 1836 the Commons a third time sent up the bill to the Lords, and the Peers again defeated it by the elimination of the appropriation clause.'[3]

'Irish Tithe Bill mutilated and dropped.'[4]

When Viscount Morpeth introduced his Tithe Bill in 1836, Sir Robert Peel said[5]:—'The whole plan is a mere attempt to manufacture an *imaginary* surplus for the sake of clinging to the principle of appropriation.'

Lord Stanley,[6] on the motion for the second reading of the bill, took the novel course of moving, as an amendment, for leave to bring in a bill of his own 'for the conversion of tithe into a rent-charge, and for the redemption thereof, and for the better distribution of ecclesiastical revenues in Ireland.'

The second reading of the ministerial measure was carried by a majority of 39.[7]

In committee the appropriation clause was carried by a

[1] See Hansard's *Parl. Debates*, third series, vol. xxvii. 314, 750.
[2] *Annual Register* for 1835, p. 365.
[3] *Fifty Years of the House of Lords*, p. 26.
[4] *The House of Lords; a Retrospect and a Forecast*, by T A. Spalding, appendix, pp. 261, 265. [5] *Annual Register*, for 1836, p. 70.
[6] Formerly Mr. Stanley, afterwards Earl of Derby.
[7] 300 to 261. Hansard's *Parl. Debates*, third series, vol. xxxiv. 117. Mr. Gladstone voted against the second reading. *Ibid.* 120.

reduced majority of 26.[1] Mr. Gladstone voted against it.[2] So did the House of Lords, after passing the second reading of the bill without a division. The appropriation clause, which had been carried against the wishes of Mr. Gladstone by a reduced majority of 26, was now rejected by a majority of 91![3]

The Prime Minister, Viscount Melbourne, acknowledged that the appropriation clause raised a 'subject of great difficulty.'

While the bill was passing through the House of Commons, Mr. Sharman Crawford was left with only 18 supporters, when he moved that tithes in Ireland should be totally extinguished.[4] Mr. O'Connell was in a great rage with him for making an 'out of a face,' 'no compromise' speech, and voted against him![5] While Mr. O'Connell was abusing Mr. Sharman Crawford for proposing the total extinction of tithes in Ireland, he was writing to his constituents in Kilkenny[6]:—'I will take my instalment, however small, at any time, when to get more is out of my power, and then go on for the balance. I realise for Ireland all I can get, and, having got part, I am thus better able to seek the rest. This is precisely the principle I have acted on with respect to the tithe system in Ireland. My opinion is that tithes ought to be totally abolished, and that, ultimately, nothing less than the abolition of them entirely will, or ought to satisfy the Irish people. But it is not yet time for this. Not fifty men in the House of Commons will vote for it. The Whigs, however, have offered a great deal.'

This was 'the crafty and scheming' agitator with whom Lord Melbourne linked his fortunes, and who only met with his match in the House of Lords!

'It has been seen,' says the 'Annual Register' for 1836,[7] 'in our parliamentary history that the menaces of O'Connell and his associates had rather tended to call forth expressions of opinion that the Lords should fearlessly exercise their constitutional rights.'

'There can be no doubt whatever,' says the Duke of Argyll, 'that, in regard to the Appropriation Bill, the opinion of the

[1] 290 to 264. Hansard's *Parl. Debates*, third series, vol. xxxiv. 1259.
[2] *Ibid.* 1262.
[3] *Ibid.* vol. xxxv. 515. 138 to 47.
[4] *Ibid.* vol. xxxiv. 1135–1150.
[5] *Ibid.* 1147, 1149.
[6] *Annual Register* for 1836, p. 304.
[7] P. 300.

House of Lords was the opinion of the Protestant people of this country at that time.'[1]

'In 1837 the Tithe Bill was read a second time by the Commons by a majority of 229 to 14; but the death of the king saved the Lords the trouble of rejecting it.'[2]

This is a most misleading statement. In the first place the 'majority of 229 to 14' was obtained over Mr. Sharman Crawford, who moved the rejection of the bill, as it did not extinguish tithes, and *contained no appropriation clause*.[3] In the second place 'the Lords' would not have 'rejected' the bill, so that the death of the king alone prevented its passing.

The Postmaster-General

'The proposal to abolish the postmaster-generalship—(*sic*) replacing him (*sic*)—by a Post Office board of commissioners was repeatedly sanctioned by the Commons, but as invariably rejected by the Lords. That Mr. Fawcett is postmaster-general, and not first commissioner of the Post Office, is due to the House of Lords—a fact which can hardly have had any influence upon his recent apologies for the action of the Hereditary Chamber in 1880.'[4]

The public, I am sure, have forgotten that no fewer than six commissions[5] recommended that the office of postmaster-general should be abolished and a board of three commissioners divide the office amongst them! Only ten members of the House of Commons opposed this so-called reform in 1835,[6] and one of them was Mr. Gladstone.[7]

The late Duke of Richmond (himself formerly postmaster-general), in moving the rejection of the 'Post Office Commissioners' Bill, 1835,' in the Lords, said[8]:—'The postmaster-

[1] Speech at Glasgow on November 1, 1893. *Times*, November 2, 1893. (There was always an *English* majority against the Appropriation Clause.)

[2] *Fifty Years of the House of Lords*, pp. 26, 27.

[3] *Annual Register* for 1837, pp. 77, 78.

[4] *Fifty Years of the House of Lords*, pp. 57, 58.

[5] In 1785–8, 1797, 1809, 1829 and 1835. See Hansard's *Parl. Debates*, third series, vol. xxxv. 418, 1159, 1162.

[6] *Ibid.* 418–429, 906.

[7] *Ibid.* 907.

[8] *Ibid.* 1160, 1161. 'The idea of abolishing the office of postmaster general is wild and visionary.' *Ibid.* vol. xxxiv. 603, 604.

general has an undivided responsibility, and the alteration suggested would give a divided responsibility among the commissioners.'

The House of Lords rejected the bill [1] and public opinion has ratified this decision. Who thinks of abolishing the office of postmaster-general now?

Legal Reform

A strong Radical [2] says:—'The House of Lords has never had an interest adverse to the reformation of the law.'

On the other hand, the author of 'Fifty Years of the House of Lords' says [3]:—'The House of Lords has always contained among its members some of the most eminent lawyers of the country. Nevertheless, or perhaps, as some would say, on that account, it has retarded the progress of legal reform from 1833, when it rejected the Scotch Small Debts Bill.'

But so considerable were the legal reforms carried through both Houses before 1833, that the Liberal historian, Mr. Walpole, says [4]:—'With all their shortcomings, the reforms which were commenced by Peel, and which were supplemented by Brougham, were the first that were attempted in this country for the improvement of the judicature, and invest with additional interest the period of progress which commenced with the reign of George IV.'

The most superficial glance at the columns of Hansard would have revealed the fact that there is no foundation whatever for the statement that 'the House of Lords rejected the Scotch Small Debts Bill in 1833.'

On August 28—the day before the prorogation of parliament—the Lord Chancellor (Lord Brougham) said [5]:—'There is now on the table a bill of which I most highly approve, but which, nevertheless, I do not feel bound to press through parliament in the present session. It is a bill to

[1] 'Content' 22, 'Not-content' 57, majority 35; Hansard's *Parl. Debates*, third series, vol. xxxv. 1159–1170.

[2] Mr. Thorold Rogers (formerly M.P. for Southwark) in the preface to his *Protests of the Lords*, vol. i. p. xxvii.

[3] P. 55.

[4] *History of England*, vol. iii. chap. xii. p. 54.

[5] Hansard's *Parl. Debates*, third series, vol. xx. 894, 895.

extend the jurisdiction of the Small Debts Courts in Scotland. There are two reasons why I shall not press the bill at this moment. The first is that there have been commissioners appointed, among other things, to inquire into the jurisdiction of these courts, and to report whether any, and what alterations are necessary—a reason sufficient in itself; and the second is, the late period of the session.' [1]

County Courts

'The liberties of the Anglo-Saxon thanes were chiefly secured,' says Hallam,[2] 'next to their swords and free spirits, by the inestimable right of deciding suits in their own county court, an institution which survived the Conquest.' 'No appeal could be made to the royal tribunal, unless justice was denied in the county court.' [3]

The county court, except for the purpose of electing knights of the shire, coroners, and verderers,[4] fell into disuse.

'The annals of parliament,' says Mr. Bowen-Graves,[5] 'tell how, when the Commons attempted to curtail the expenses and delays of litigation by the "Poor Man's Bill" for the local jurisdiction of county courts, those delays and expenses were, by the influence of the House of Lords, for thirteen years needlessly prolonged.'

'For years,' says the author of 'Fifty Years of the House of Lords' [6]—'the late Mr. F. Bowen-Graves, in his admirable papers in the "Fortnightly Review" on "Forty Years of the House of Lords," which suggested the present retrospect, says "for thirteen years"—the House of Lords prolonged the needless expenses and delays which stood between the poor and the cheap and speedy justice of the county court.'

Mr. Bowen-Graves, I suppose, dated back his 'thirteen

[1] The author of *Fifty Years of the House of Lords* seems to imagine that the withdrawal of a bill by the lord chancellor is equivalent to it rejection by the Lords!

[2] *Middle Ages*, vol. ii. chap. viii. part i. p. 280. [3] *Ibid.* p. 285.

[4] *Complete Practice of County Courts*, by G. Pitt-Lewis, Q.C., M.P., 4th edit. book i. chap. i. pp. 1–11.

[5] In the *Fortnightly Review* for February 1873, p. 247, cited by the author of *Fifty Years of the House of Lords*, p. 55.

[6] Pp. 55–56. 'Their lengthy resistance to the reform of the county courts.' Harold Spender's *House of Lords*, p. 34.

years' from the year 1846, when the Bill for the Establishment of County Courts throughout the Kingdom became law.[1] Thirteen years would take us back to the year 1833.

In that year Lord Brougham, as Lord Chancellor, introduced a bill entitled 'The Local Jurisdiction Bill.'[2] It could not be one of the bills, however, referred to by Mr. Bowen-Graves—an attempt by the Commons to curtail the expenses and delays of litigation by the 'Poor Man's Bill' for the local jurisdiction of county courts, 'as it was not sent up by the Commons. It originated in the House of Lords, which read it a second time without a division.[3] The bill survived the perils of its first committee.[4] On the motion for its recommittal, no less a legal luminary than the Earl of Eldon, ex-chancellor, moved that 'this bill be recommitted this day six months'; he was defeated by a majority of fourteen.[5] The bill was fully discussed by the Law Lords and others, in going through committee a second time; but no division was taken on it.[6] By a small majority, less than that by which the bill was recommitted, it failed to pass the third reading.[7] The Peers were very equally divided on the subject. In the opinion of Lord Campbell in his 'Life of Lord Brougham,'[8] 'the bill was properly rejected'!

Lord Lyndhurst, the chief opponent of the bill, turned into ridicule the expression 'Poor Man's Bill,'[9] which was used by Lord Brougham, and is repeated by Mr. Bowen-Graves.[10] Its more appropriate name would have been, 'A Bill for the Recovery of small Debts from the Poor Man'! It was the poor man's creditors, not the poor man himself, who clamoured for the bill! Many of the weak points, which

[1] 9 & 10 Vict. cap. 95.
[2] Hansard's *Parl. Debates*, third series, vol. xvi. 1190–1198.
[3] *Ibid.* vol. xviii. 554. [4] *Ibid.* 857–902; 1062, 1063.
[5] *Ibid.* 1105–1107. 'Contents' (for recommittal) 52, 'Not contents' 38. *Ibid.* 1117. [6] *Ibid.* 1117–1129, 1286–1291.
[7] *Ibid.* vol. xix. 372. There were three divisions; on the first the votes were 'Contents' 122, 'Not contents' 134; majority, 12; on the second, 'Contents' 68, 'Not contents' 76; majority 8; on the third, 'Contents' 68, 'Not contents' 73; majority, 51.
[8] *Lives of the Chancellors*, vol. viii. chap. v. p. 417.
[9] Hansard's *Parl. Debates*, third series, vol. xix. 323, 324. [10] *Ubi supra.*

have been developed in the county court system, were foreshadowed by Lord Lyndhurst in what Lord Plunket termed his 'able, eloquent, and masterly speech.'[1] It was really a battle of giants, Lord Brougham and Lord Lyndhurst being pretty equally matched.

The Court of Chancery

'The Peers obstructed the reform of the Augean Stables of the Court of Chancery.'[2] I quite agree in the phrase, 'Augean Stables,' as applied to the Court of Chancery; but the House of Lords was far more active than the House of Commons in cleansing them.

In 1829 Lord Lyndhurst, the Tory Chancellor of Peel, carried through the House of Lords[3] a measure of reform known as the 'Suitors in Equity Bill'; but it was dropped in the Commons.

In 1832 Lord Brougham 'was very assiduous,' says Lord Campbell,[4] 'in his efforts for improving the administration of justice. He passed a bill for the abolition of a great many sinecure offices in the gift of the Lord Chancellor.'

This measure was introduced by the Lord Chancellor, Lord Brougham, into the House of Lords. 'The office which I hold,' he said,[5] 'is paid in the very worst way in which it could be paid, partly by salary, partly by fees, and partly by patronage. The necessary effect is to keep alive a number of useless places. It is my unalterable determination to endeavour to prevail on parliament to abolish these sinecure offices.'

The bill passed through the House of Lords without a single division, and was sent down to the House of Commons, where a division appears to have taken place.[6]

The enactment is the 2 and 3 William IV. cap. 111; and it received the royal assent on August 15, 1832.

[1] Hansard's *Parl. Debates*, third series, vol. xix. 329. This subject is continued in the next chapter (chap. xx.), which see.
[2] *Fifty Years of the House of Lords*, p. 56.
[3] Hansard's *Parl. Debates*, new series, vol. xxi. 1162, 1274–1292, 1507
[4] *Lives of the Chancellors*, vol. viii. chap. v. p: 417.
[5] Hansard's *Parl. Debates*, third series, vol. xiv. 739, 740.
[6] *Ibid.* 1300.

The facilities which it afforded for future reforms were enormous.

Section 1 ran as follows: 'The offices of keeper or clerk of his majesty's hanaper, the patentee of the subpœna office, the registrar of affidavits, the clerk of the crown in chancery, the clerk of the patents, the clerk of the custodies of lunatics and idiots, the prothonotary of the court of chancery, the chaff wax, the sealer, the clerk of the presentations, the clerk of inrolments in bankruptcy, the clerk of dispensations and faculties, and the patentee for the execution of the laws and statutes concerning bankrupts, shall utterly cease and determine.'

Lord Campbell, in his 'Life of Lord Brougham,'[1] says:—'he did not touch the Radical grievance—the system of masters in chancery. But the time for such a change had not arrived.'

The time arrived in 1852, when a Conservative ministry was in power, and the greatest equity lawyer of his age on the woolsack.[2]

The Common Law Courts

'The Lords repeatedly rejected measures simplifying the procedure of the common law courts in England.'[3]

'The Lords attempted to hinder the simplification of procedure in the common law courts.'[4]

Lord Campbell, in his 'Life of Lord Brougham,' says[5]:—'In consequence of his memorable speech on "Law Reform," two royal commissions were issued, one for the proceedings in the common law courts, and another for the law of real property. The reports of these commissions were followed by various acts of parliament, which have most materially improved the judicial institutions of the country.'

'An ordinary English gentleman,' says Mr. Walpole,[6] 'who found it necessary to go to law, must have been

[1] *Lives of the Chancellors*, vol. viii. chap. v. pp. 387, 388.
[2] This subject is continued in chap. xx. *infra*.
[3] *Fifty Years of the House of Lords*, p. 56.
[4] *The House of Lords*, by Harold Spender, p. 34.
[5] *Lives of the Chancellors*, vol. viii. chap. iv. p. 359.
[6] *History of England*, vol. iii. pp. 32, 33.

strangely puzzled, on the very threshold of his suit, by the procedure which it was requisite to adopt. In the three superior courts the process was different. The process was so obscure that not one man in every thousand attempted to understand it.'

What did the Lords do? Endeavour to perpetuate this complicated procedure? No. They gave their unanimous assent to the bill to establish uniformity of practice in the three superior courts at Westminster Hall. The bill was first carried through the Lords,[1] and then sent down to the Commons, and became law.[2] It abolished the complicated procedure referred to, and directed that all actions should commence with the personal service of a writ of summons on the defendant.[3]

The form given by the act is so excellent, that it was adopted by the framers of the Supreme Court of Judicature Acts, and is in force at the present day.

Prisoners' Counsel

'In 1834,' says Mr. Spalding,[4] 'a bill for the purpose of enabling a prisoner charged with felony to employ counsel to defend him was passed. It was sent up to the House of Lords, which contemptuously dropped it.'

A bill for this excellent purpose was, no doubt, introduced in the House of Commons by Mr. Ewart, a private member. For some unaccountable reason the bill was not read a third time, and 'passed,' till July 22.[5] The bill was read a first time in the House of Lords next day. Three weeks later parliament was prorogued. I am at a loss to see on what data Mr. Spalding bases his 'indictment' against the House of Lords, that the bill was 'contemptuously dropped' by the Peers. The bill was never reached, owing to the prorogation. When a bill passes the House of Commons it is at once taken across to the House of Lords, and read a

[1] Hansard's *Parl. Debates*, third series, vol. x. 986, &c.
[2] 2 & 3 Will. IV. cap. 39 (1832). [3] Sect. 1, and schedule No. 1.
[4] *House of Lords*, chap. xvii. p. 207.
[5] See, as to this bill, vol. xxiv. of Hansard's *Parl. Debates*, third series, 158, 821, 1097; vol. xxv. 334.

first time. The process is automatic. The transaction is purely formal.

'1835. Counsel for Prisoners Bill dropped,' says Mr. Spalding.[1]

'Take England,' said Daniel O'Connell, 'what had become of the Prisoners' Counsel Bill? Cushioned.'[2]

The bill had a very narrow escape, on the motion for the third reading in the House of Commons. 'The bill was sent up again.'[3] Yes, by a majority of 7 (!);[4] but not until a few more divisions did the bill 'pass.' Mr. Ewart moved to insert an amendment, giving prisoners' counsel a right of reply, if the counsel for the prosecution replied, and this attempted alteration in the general law was carried by a majority of 1! Another division, extending the bill to cases before magistrates with summary jurisdiction, was also carried by a majority of 1![5]

Having escaped by the 'skin of its teeth' from the pitfalls of the House of Commons, the bill was read a first time in the House of Lords on July 18, 1835, and two days later it was read a second time, on the motion of Lord Brougham, *nem. con.*[6] It appears from the Lords' Journals that it was then referred to a very strong select committee, which included Lord Kenyon, Lord Ellenborough, Lord Lyndhurst, Lord Brougham, Lord Denman, Lord Abinger, and the Earl of Eldon. The investigation must have been thorough, as a message was sent to the House of Commons for members of that House to attend, and leave was given accordingly. On August 28, Lord Denman pointed out[7] some objectionable features which had been engrafted on the bill in the Commons, such as that a prisoner might require a particular gentleman at the bar to be his counsel and undertake his defence, and that such gentleman could be *compelled* by the court to undertake that office!

[1] *House of Lords; a Retrospect and a Forecast*, appendix, p. 264.
[2] *Fifty Years of the House of Lords*, p. 49.
[3] *The House of Lords*, p. 207.
[4] 'Ayes' 43, 'Noes' 36. Hansard's *Parl. Debates*, third series, vol. xxix. 363.
[5] *Ibid.* 364.
[6] *Ibid.* 603.
[7] *Ibid.* vol. xxx. 1067.

Lord Brougham, replying to Lord Denman, said[1] he 'must admit that the weight of evidence against the bill had pressed strongly on his mind. He had never thought the subject perfectly clear, but he thought so now less than ever. Several witnesses of great experience at the Old Bailey had been examined, and their testimony was generally against the bill. Under these circumstances he felt that he should not be discharging his duty if he pressed the measure through this session.'

What right had O'Connell to say that the House of Lords 'cushioned' it?

'1836. Counsel for Prisoners Bill dropped.'[2]

When the bill, 'in every respect the same,' was introduced into the House of Commons, Sir Eardley Wilmot asked, 'But what had Lord Denman and Lord Brougham said of it? He could not agree to the principle of allowing *four* speeches to counsel in defence of a prisoner.' Mr. Ewart very sensibly said that the other House of Parliament had never given any decision on the bill.[3]

The amendment inserted in the bill in the previous session taking away the right of reply of counsel for the prosecution, reappeared in the bill of 1836, but the Liberal attorney-general (Sir John, afterwards Lord Campbell, Lord Chief Justice) objected to it, in committee on the bill, in the Commons.[4]

An acrimonious discussion arose, in committee in the Commons, on the wording of the bill, which appeared to give attorneys a right of audience in courts where counsel had a right of audience, and Mr. Wakley wanted to give anybody whom the prisoner might like to employ a right to defend him—'legal quacks' Mr. Wason called them.[5]

At length the bill reached the House of Lords, and the great lawyers there, whether Whig or Tory, were unanimous now in their praise of its principle. Whether Lord Brougham hesitated, on account of his former speech, to move the second

[1] Hansard's *Parl. Debates*, third series, vol. xxx. 1068.
[2] *House of Lords*, by T. A. Spalding, appendix, p. 265.
[3] Hansard's *Parl. Debates*, third series, vol. xxxi. 225, 226.
[4] *Ibid.* 1147.
[5] *Ibid.* 1142, 1143.

reading of the Counsel for Prisoners Bill, I know not. 'As no member of the Government,' said Lord Lyndhurst,[1] 'has intimated an intention of moving the second reading, I think it my duty to make the motion'; and the Tory ex-chancellor did so in a magnificent speech, which occupies eleven closely-printed columns of Hansard.

On June 23, this bill, which had excited so much adverse comment in the Commons, was read a second time in the Lords, *nem. con.*[2] On June 30 it passed through Committee,[3] with the omission, by a majority, of the interpolated clause regarding the right of reply. On July 14 the report was agreed to.[4] On July 15 the bill was read a third time and passed.[5]

So what becomes of Mr. Spalding's statement that the bill was 'dropped' by the Lords? Mr. Spalding thought the bill was 'dropped' by the Lords, because he traced the bill under the title of 'Prisoners' Counsel Bill' from the Commons to the Lords, but omitted to observe that the title of the bill was changed to 'Counsel for Prisoners Bill' in the index to Hansard. If Mr. Spalding had followed up this clue he would have discovered that the amendments inserted by the Lords were a subject of controversy between the two Houses; but the House of Lords refused to give way, and ultimately the House of Commons gave way on the advice of Lord John Russell, and the bill became law, with the Lords' amendments in it, and is now the 6 & 7 Wm. IV. cap. 114.[6] It is a splendid contribution to the liberty of the subject.[7]

And now I desire to ask what justification is there for Mr. Spalding's action in including this excellent measure in his 'Indictment against the House of Lords,' 'Count 3,'[8] as substantiating his absurd 'charge' that the House of Lords has 'oppressed small minorities'? Even the author of 'Fifty Years' has not dared to do so.

[1] Hansard's *Parl. Debates*, third series, vol. xxxiv. 760–771.
[2] *Ibid.* 778. [3] *Ibid.* 1061–3. [4] *Ibid.* vol. xxxv. 186. [5] *Ibid.* 228.
[6] I see that, on p. 207, Mr. Spalding recognises that 'in 1836 the Lords were induced to pass the bill.'
[7] The act is set out in the appendix. [8] *House of Lords*, p. 207.

But Mr. Spender[1] has copied the errors of his master. 'Resistance,' he says, 'was made to the Counsel for Prisoners Bill in 1836. The Lords compelled the reformed parliament to drop this reform both in 1835 *and 1836*.'

Really, Mr. Spender, you should not pin your faith so entirely to another man's sleeve. The 'Liberal Publication Department' should be more careful as to its facts!

Imprisonment for Debt

'Session after session the House of Lords resisted the demands of the Commons for the abolition of imprisonment for debt. The bill was rejected one year, referred to a select committee another, and abandoned in a third.'[2]

I would point out that it is a mistake to suppose that imprisonment for debt ever has been or ever can be 'abolished.' It would dislocate the whole trade of the country if imprisonment for debt were abolished. Working-men would be unable to obtain credit for the chief necessaries of existence. There is not a county court judge who does not annually commit to gaol scores of debtors for failing to obey orders of the court made on judgment summonses.[3] The debtor almost invariably finds the money at the last moment, to save himself from the disgrace of imprisonment. No other motive would have a tithe of the influence on his mind.

Lord Abinger, Lord Chief Baron of the Exchequer, uttered some weighty words in the debate on Lord Cottenham's 'Abolition of Imprisonment for Debt Bill, 1836'[4]:—'The proposition to abolish imprisonment for debt after judgment obtained was a proposition which required the deepest consideration. Imprisonment for debt after judgment has been the law of England from the earliest periods of our history, and is now the law of every other country in Europe.'

[1] *The House of Lords, who they are, and what they have done*, p. 34.
[2] *Fifty Years of the House of Lords*, p. 55. See also O'Connell' speech, pp. 49, 50.
[3] Under the Debtors' Act, 1869 (32 & 33 Vict. cap. 62), sect. 5 on proof of 'means.'
[4] Hansard's *Parl. Debates*, third series, vol. xxxv. 74.

We shall see in the next chapter[1] that a beneficent measure for the abolition of arrest on mesne process, originating in the House of Lords, became law shortly after the accession of Queen Victoria.

CHAPTER XX

THE HOUSE OF HANOVER.—QUEEN VICTORIA

I. 1837–1892

We have now reached the Victorian Era.

'I believe,' said the Right Hon. Spencer Horatio Walpole,[2] 'that future generations will look back with pleasure upon this reign—this beneficent reign, in which many good things have been done.'

Fifty Years of the House of Lords

And yet forty-three out of the 'Fifty Years of the House of Lords' fall within this 'beneficent reign'!

The 'fifty years' run from 1830 to 1880, and then, suddenly, there is a break of fourteen years, during which Mr. Gladstone was Prime Minister thrice. Probably Mr. Gladstone cited a *stale* pamphlet, because he did not desire to call attention to the intervening years, lest they should disclose the awkward fact that it was *the House of Commons*, and not the House of Lords, which defeated his first Home Rule Bill! The period consigned to oblivion also included the victory of the Peers over Mr. Gladstone in 1884, when the House of Lords refused to pass his County Franchise Bill until he had told them what he meant to do with regard to the redistribution of county seats, so as to disable him from 'gerrymandering' the constituencies.

Mr. Spalding goes into the history of the Franchise Bill

[1] Chap. XX. *infra*. Charles Dickens has made the story of a debtor's imprisonment on mesne process in the Marshalsea familiar. See Walpole's *History of England*, vol. iv. chap. xvii. pp. 92, 93.

[2] When introducing, as Home Secretary, The Factory Act Extension Bill, 1867. Hansard's *Parl. Debates*, third series, vol. clxxxv. 1279.

of 1884,[1] but he is very careful to suppress or, at least, minimise, the ultimate triumph of the House of Lords. The period omitted also included the Irish Land Act of the Conservative Government in 1887, which conferred remarkable benefits on Irish tenants.

The *Review of Reviews* makes no attempt, in its new edition of the 'small work,' to bring it up to date, except as to very recent events, which are put in small type, and exhibit the yawning gulf of fourteen years all the more conspicuously.

Some parts of the work are almost unintelligible, owing to its suddenly pulling up in 1880. To use a Disraelian phrase, 'A great deal has happened since then.'

Abolition of Capital Punishment for Minor Offences

'The House of Lords resisted the Abolition of Capital Punishment for Minor Offences.'[2]

In her very first speech to the Lords and Commons, Queen Victoria said:—'I perceive with satisfaction that you have brought to maturity some useful measures, amongst which I regard with peculiar interest the amendment of the criminal code and the reduction of the number of capital punishments. I hail this mitigation of the severity of the law as an auspicious commencement of my reign.'[3]

These measures met with the hearty approval of the House of Lords.[4]

The Abolition of Arrest on Mesne Process (1 & 2 *Vict. cap.* 110)

Any person who made a deposition, on oath, that some other person was in debt to him, could obtain his arrest 'on mesne process.' The warrant issued as a matter of course.

On the accession of Queen Victoria, the House of Lords sent down to the House of Commons a most salutary measure for the abolition of this pernicious method of worrying poor

[1] *House of Lords*, pp. 194–199.
[2] *Fifty Years of the House of Lords*, p. 55.
[3] Hansard's *Parl. Debates*, third series, vol. xxxviii. 1922.
[4] *Ibid.* 1773–1790; and 1907, 1908, 1915, 1916.

debtors. The bill passed the second reading in the Lords without a division,[1] and was then considered by a select committee.[2]

The Prisons (England) Bill, 1838

'A bill, giving borough justices the same control over borough gaols as that possessed by county justices over county gaols, permitting the appointment of a chaplain other than a clergyman of the Church of England, and increasing the power of the Secretary of State, was rejected by 33 votes to 32.'[3]

The provision enabling magistrates to appoint a chaplain, 'other than a chaplain of the Church of England,' was not in the bill as originally introduced, and its insertion in committee in the Commons was vehemently opposed by Mr. Gladstone. It was not, however, the ground on which the bill was rejected in the Lords.[4]

In committee Mr. Gladstone said[5]:—'Sufficient facilities, he believed, were already given to clergymen of the various denominations to obtain access to the prisoners, who coincided with them, for the purpose of religious instruction.'

On the third reading, when the exact form of the amendment was settled, Mr. Gladstone said[6]:—'I object to any infringement whatever of the principle on which the Established Church is founded—that of confining the pecuniary support of the State to one particular denomination. At present the Roman Catholic priests, as well as other dissenting clergymen, are allowed to have access to prisoners of their own communion.'

Apart from the objection to the lateness of the period at which the bill was brought forward in the Lords—ten days before the prorogation of parliament—the ground on which the bill was rejected was this:—'The effect of the bill is, in

[1] Hansard's *Parl. Debates*, third series, vol. xxxix. 550–599.

[2] *Ibid.* 599. By the 3 and 4 Vict. cap. 105, the principles of this excellent measure were extended to Ireland.

[3] *Fifty Years of the House of Lords*, p. 51.

[4] Only one peer incidentally referred to it. Hansard's *Parl. Debates*, third series, vol. xliv. 1009.

[5] *Ibid.* 191.

[6] *Ibid.* 493.

substance, to enable the Secretary of State to establish a system of solitary confinement in every gaol throughout the kingdom. To give to one individual, and that individual a minister of the Crown, power to establish throughout the kingdom a system of solitary confinement is an augmentation of power which ought not to be entrusted to a single individual.'

This, no doubt, was the language of a Conservative statesman.[1] But he was followed by a Liberal statesman, who said[2]:—'I have not heard enough to convince me that we ought to entrust such extensive powers to a minister of the Crown.'

So that, instead of 'oppressing small minorities,'[3] the Lords were safeguarding them from oppression!

'Nearly forty years later, a Conservative Ministry carried a Prisons Act far more centralising than that which the Peers rejected in 1838.'[4]

I have yet to learn that Lord Cross's 'Prison Act'[5] gives the Secretary of State power to order a prisoner to undergo solitary confinement, the most stern of all punishments short of death!

The Union of Hearts

'The mind of the ruling power,'[6] says the author of 'Fifty Years of the House of Lords,' 'was hostile to the Irish Catholics; and every attempt to give effect to the spirit of the Emancipation Act was opposed by the House of Lords. In 1839 this opposition assumed the shape of an informal vote of censure, which led to the counter-motion in the Commons, in support of which Earl Russell made a speech on the government of Ireland, which might be read with advantage by many of our statesmen to-day.'[7]

It may be true that a vast proportion of the Irish criminals were members of the Church of Rome; but the 'informal vote

[1] Lord Lyndhurst, Hansard's *Parl. Debates*, third series, vol. xliv. 1009, 1010.
[2] Lord Brougham, *ibid.* 1011.
[3] *House of Lords*, by T. A. Spalding, LL.B., p. 207.
[4] *Fifty Years of the House of Lords*, p. 51.
[5] 40 and 41 Vict. cap. 21 (The Prison Act, 1877).
[6] The 'ruling power' was at the time the Melbourne Ministry!
[7] *Fifty Years of the House of Lords*, p. 25.

of censure' was aimed, not at Irish Roman Catholics, as such, but at Irish *crime*. Was there a *primâ facie* case for inquiry as to the exceptional treatment of these criminals, and, especially, as to the alleged abuse by the Marquess of Normanby, Viscount Melbourne's Lord Lieutenant, of the exercise of the prerogative of pardon? A small majority of the Lords,[1] including Lord Brougham, the ex-chancellor of Earl Grey and Viscount Melbourne, thought that there was a *primâ facie* case for inquiry. Lord Normanby himself admitted, in his elaborate defence, that of 1681 memorials in favour of criminals half [2] had been favourably considered.[3]

The 'Precursors' Society' formed by O'Connell, and nicknamed 'the Cursers,'[4] spread terror in Ireland amongst the Loyalists. Lord Normanby made no secret of his disapproval of that society, but felt reluctant to make any recommendations for its suppression.[5]

'The ministers,' says Mr. Walpole, 'were themselves conscious of their own failure.'[6] 'The attack upon their Irish administration,' he adds,[7] 'was emphasised by an event as unexpected as it was horrible. On the first day of 1839, Lord Norbury, the son of the Irish judge who had presided at Emmett's trial, an elderly peer, whose life had been spent in acts of kindness and charity, who had taken no active part in politics, and who was believed to be on good terms with his tenantry, walking with his steward in a plantation on his Meath estate, in open daylight, was shot and mortally wounded. The assassin escaped.'[8]

With regard to Lord John Russell's 'counter-motion in the Commons,' it led to some very plain speaking on the part

[1] 'Content' (for inquiry), 63; 'Not Content,' 58. Hansard's *Parl. Debates*, third series, vol. xlvi. 1047.

[2] 822. [3] *Annual Register* for 1839, p. 55.

[4] Walpole's *History of England*, vol. iii. chap. xv. p. 461; Life of Archbishop Whately, vol. i. p. 418.

[5] *Annual Register* for 1839, p. 55.

[6] *History of England*, vol. iii. chap. xv. p. 458.

[7] *Ibid.* pp. 458, 459.

[8] 'O'Connell, in order to turn away from his own supporters the infamy of this odious crime, broadly insinuated, *with his usual recklessness*, that the assassin of Lord Norbury was that nobleman's own son.' Molesworth's *History of England*, vol. ii. chap. i. p. 23.

of some of the 'supporters' of the Government:—'I say that the Government have remained in power these two years,' exclaimed Mr. Leader,[1] 'on sufferance. I say more, that they exist this moment, by the sufferance of ten or twelve men; and that if ten or twelve of those sitting on this side were to join the hon. gentlemen opposite, they would cease to be a Government.'

The writer of the 'small work' penned it before the period when the Home Rule Bills of Mr. Gladstone were introduced. The same phrases which Lord John Russell used in 1839 have been repeated by Mr. Gladstone in 1886 and 1893. Here is Lord John's peroration[2]:—

'We have endeavoured to introduce a friendly relation between this country and that part of the United Kingdom; we have been ready to endeavour to unite by affection, to unite by feelings of good will and love, the people of this country and the people of Ireland, to found the government of Ireland upon opinion, upon affection, upon goodwill; and if the Ministry should fall, it will fall in an attempt to *knit together the hearts of Her Majesty's subjects!*'[3]

Could Mr. Gladstone's 'Union of Hearts' be more plainly foreshadowed? But, sad to relate, Lord John Russell's peroration did not influence Mr. Gladstone's *vote*; Mr. Gladstone voted against Lord John Russell, in the division at the close of the debate. 'Ayes' 318, 'Noes' 296; majority 22.[4] Mr. Gladstone voted with the 'Noes'![5]

Wholly undeterred by the action of Lord John Russell in the House of Commons, the House of Lords subsequently passed, by a substantial majority,[6] a series of resolutions, moved by Lord Brougham, and founded on the Report of the Lords' Committee of Inquiry into Irish Crime, practically condemn-

[1] Hansard's *Parl. Debates*, third series, vol. xlvii. 373.

[2] 'If eloquent perorations could regenerate a nation, Ireland would be the most prosperous and most contented part of the United Kingdom.' Lord Lansdowne in 1881, *ibid.* vol. cclxiv. 278.

[3] Hansard's *Parl. Debates*, third series, vol. xlvii. 39 (April 15, 1839).

[4] *Ibid.* 447.

[5] *Ibid.* 450.

[6] 'Contents' 86, 'Not-Contents' 52; majority 34. Hansard's *Parl. Debates*, third series, vol. xlix. 1381.

ing the mode in which the Marquess of Normanby had perverted the course of justice in Ireland.

'In 1839, the Lords, after a long and angry debate, solemnly passed a vote of censure on an Irish judge, Sir M. O'Loghlen, because he had given directions that no juror should be set aside on account of his political and religious opinions.'[1]

This 'vote of censure' was implied in the adoption of Lord Brougham's Resolutions to which I have just referred.

Two of the Resolutions were specially aimed at Sir M. O'Loghlen's 'instructions' to Crown prosecutors in 1836, when Attorney-General for Ireland:—'You will not set aside any juror on account of his political or religious opinions.'

Sir M. O'Loghlen was not named in the Resolutions, only in the debates. He had become Master of the Rolls in Ireland; but it was not as 'an Irish judge,' but only for his conduct when Attorney-General for Ireland, that he was impliedly censured by the Resolutions.[2]

Lord Brougham, in his speech, said:—

'It was probably very agreeable to the feelings of Mr. Attorney-General O'Loghlen to have the opportunity of telling his own sect and party, "See what I have done! I have tied up the hands of the prosecutors! They can never challenge a man now on account of his religion or politics"! Although the case may be absolutely steeped in all the rancour of sectarian animosity—although the quarrel may be a political one,' the 'denial of justice' is 'secured by empannelling, in the one case, a sectarian, in the other, 'a political jury.'[3]

Sir Michael was examined before the Lords' Committee of Inquiry into Irish Crime.

'I questioned him,' said Lord Brougham, 'for nearly half an hour, and all the members of the committee, to whom I have spoken, agree with me in opinion that the explanation of the construction which he put upon these directions was very short indeed of being a satisfactory, or even a consistent

[1] *Fifty Years of the House of Lords*, p. 29.
[2] Hansard's *Parl. Debates*, third series, vol. xlix. 1325.
[3] *Ibid.* 1288.

or an intelligible statement.'[1] It appears that, not satisfied with giving orders that meant one thing and said another, the Attorney-General gave different directions to different men! 'One week, after giving instructions to Mr. Kemmis, he gave instructions of a totally different nature to Mr. Hickman'![2]

Repeal of the Corn Laws

'The House of Lords,' says the author of 'Fifty Years' of that Assembly,[3] did not throw out the bill repealing the Corn Laws, for it was brought in by a Conservative minister, and its rejection would have entailed civil war.'

The Duke of Richmond addressed to the House of Lords, in moving the rejection of the bill, in 1846, arguments which might well have given it pause:—'The object—the avowed object—of the advocates of this measure, out of doors, was to crush the aristocracy. This measure was only the first of a series of attacks which would shake the foundation of the Throne, cripple the Church, endanger the institutions of the country, and plunge a happy and contented people into misery, confusion, and anarchy.'[4]

Notwithstanding this formidable array of prophecies, the House of Lords supported the bill on every division.

The second reading was carried by a majority of 47.[5] Amendments were defeated by majorities of 33 and 23, and the bill was read a third time and passed, without a division.[6]

All this contrasted strongly with the stout opposition which was offered to the measure in the House of Commons, 'all the resistance being made to the ministerial scheme which the forms and usages of parliament allow.'[7]

The testimony of Mr. Walpole,[8] although he mixes it up with sneers, is unimpeachable. After condemning the

[1] Hansard's *Parl. Debates*, third series, vol. xlix. 1281.
[2] These were Crown solicitors. *Ibid.* 1287; and see *The Annual Register* for 1839, pp. 88, 89.
[3] P. 13. [4] *The Annual Register* for 1846, p. 78.
[5] 211 to 164. See *The Annual Register* for 1846, p. 94. [6] *Ibid.* p. 98.
[7] *Ibid.* p. 69. [8] *History of England*, vol. iv. chap. xix. p. 283.

obstruction of the opponents of the bill in the Commons, he proceeds to say, while pointing out the ease and rapidity with which the bill passed through the House of Lords:—

'Tactics of delay, frequent as they are in the Commons, have never been tolerated in the Lords.'

Repeal of the Navigation Laws

The Bill for the Repeal of the Navigation Laws, which was vehemently opposed in the House of Commons, passed without any attempt at obstruction through the House of Lords. The fate of the Government of Lord John Russell was generally supposed to depend upon the decision of the Lords, as to the second reading of the bill.[1] The principles of Free Trade obtained a final triumph in this measure.[2]

It used to be a remark of Earl Russell's that the majority on the second reading was secured by the votes of the bishops; 'and it is undoubtedly true,' says Mr. Walpole, 'that out of twenty-five bishops, who either recorded their votes or paired on the occasion, sixteen had the good sense to support the bill.'[3]

The Mines Act, 1842
(5 & 6 *Vict. cap.* 99)

If you are seeking for an answer to the question '*Cui bono* the Lords Spiritual?' you may find some clue to it in the noble protests of the Episcopal Bench against the white slavery of our infant and female miners, in 1842.[4]

How different the language of 'Liberals' in the Lower House! Mr. Ainsworth, M.P. for Bolton, said that 'the effect of Lord Ashley's bill would be to deteriorate the condition of the children, and to aggravate the distress which already existed among the working-classes.' He contended that the children were well fed, comfortably clad, and healthy.

[1] *Annual Register* for 1849, p. 45. [2] *Ibid.* 47.

[3] *History of England*, vol. iv. p. 362. 'It is only fair,' says Mr. Walpole, grudgingly, 'to record the fact that they were in favour of *one* great measure of reform.'

[4] See Hansard's *Parl. Debates*, third series, vol. lxiii. 196 and vol. lxiv. 1166 (Bishop of Norwich); vol. lxv. 101 (Bishop of London); *ibid.* (Archbishop of Canterbury); 122 (Bishop of Gloucester).

'By this bill they would be reduced to a state of privation and suffering.'[1]

Mr. Stansfield, M.P. for Huddersfield, 'thought that if the restrictive clauses of this bill were put into operation, the trade in coals would be altogether annihilated.'[2] 'If they were to go on in this way every class would soon have its enactments. Really they should consider what these children were to do on the days they made them idle by act of parliament. They did not provide education for them, and yet they refused to let them earn an honest livelihood.'[3] Yes, earning 'an honest livelihood,' 'chained,' as the Bishop of Norwich pointed out, 'to their labour of dragging small vehicles loaded with coal through narrow passages, in which they were obliged to crawl upon their hands and knees, their garments drenched with water.'[4]

The House of Lords read the Mines Bill of 1842 a second time, and, also, a third time, without a division.

A noble lord, it is true, moved the rejection of the bill on the second reading (and he, sad to relate, was a large colliery proprietor), but he could not find a seconder!

Let anyone, who wants to obtain further information on the subject, read the Reports of the Commissioners on Mines in 1842, which Alison justly characterises[5] as 'startling and horrible,' and I feel persuaded that he will agree with the Bishop of Gloucester,[6] that it was 'their duty, as Christian legislators, to enforce morality by legislation'; but never once did Mr. Gladstone lift up his voice in furtherance of that legislation! His name will be found in the division list, silently obstructing the third reading of Lord Ashley's Bill, Mr. Ainsworth and Mr. Stansfield (selections from whose highly-intelligent speeches I have given) acting as tellers![7]

It will be seen from these historical references that the author of the 'small work' has ventured on dangerous

[1] Hansard's *Parl. Debates*, third series, vol. lxiv. 1000, 1001.
[2] *Ibid.* 936. [3] *Ibid.* 1006, 1007. [4] *Ibid.* vol. lxiii. 196.
[5] *History of Europe*, vol. vii. chap. xli. p. 79.
[6] Hansard's *Parl. Debates*, third series, vol. lxv. 122.
[7] *Ibid.* vol. lxiv. 937.

ground for the Radical cause in referring to the Mines Act, 1842.[1]

With regard to the Lords' amendments, Sir James Graham, the Home Secretary, said[2]:—'All the great principles for which the noble lord'—(Lord Ashley)—'had contended stood as they were originally meant. He certainly did not think the alterations were inconsistent with the principles of the enactment. He thought they were fair, reasonable, and just modifications.'

The Earl of Devon, who had charge of the bill in the Upper House, said 'he thought the bill would be well received elsewhere, and that the promoters of it would be of opinion that he had exercised a sound discretion in introducing these alterations.'[3]

In moving the consideration of the Lords' amendments in the House of Commons, Lord Ashley concluded his speech by saying[4]:—'He should invite the House to accede to the bill' (i.e. to the bill with the Lords' amendments in it), 'which, at all events, *went to establish a great and valuable principle.*'

The expression, attributed to Lord Ashley, that the Lords' amendments 'had invalidated the principle of the bill and rendered it inoperative'[5] is quite inconsistent with the statement at the close of the same speech.

Like most enthusiastic social reformers, the Earl of Shaftesbury was extremely impulsive; and sometimes used much stronger expressions than the nature of the subject-matter required.[6]

The figurative expression of Lord Shaftesbury had reference, especially, to the insertion in the first and second clause of the words, 'for the purpose of working therein,' by Lord Campbell, a Liberal peer.

The object of this amendment to the first and second

[1] P. 59. [2] Hansard's *Parl. Debates*, third series, vol. lxv. 1098.
[3] *Ibid.* 583. [4] *Ibid.* 1097. [5] *Ibid.* 1094.
[6] I had ample opportunities of noticing this characteristic of Lord Shaftesbury, as he had charge of several of my bills in the House of Lords. I have scores of letters of his; and I paid him frequent visits at his residence, by appointment.

clauses (women and boys) was to show that the prohibition related to working, and not to taking medicine or meals to a miner.

With regard to the insertion of these words in the first clause Sir Robert Peel thought the amendment an improvement:—'For instance, suppose a man working in a mine should break his leg, or be at the point of death, it would have been extremely hard to have prevented his wife or daughter from coming into the mine to see him. By whom had this "fatal blow," as it had been called, been struck at the bill? It was the proposition of a noble lord who had been much in the confidence of the late Government.'[1]

With regard to the insertion of these words in the second clause, Sir Robert Peel said:—'It would be rather hard to prohibit a child from taking its father's dinner to him while working in the mine. The object of the law should be to distinguish between young persons going into mines for the purpose of being employed there, and young persons entering a mine for other purposes.'[2]

By Section 1 of the Mines Act, 1842,[3] it is provided that 'from and after the first day of March, 1843, it shall not be lawful for any owner of any mine or colliery to employ any female person whatsoever within any mine or colliery.' It is impossible to use more comprehensive words than these. How, then, can the writer of the 'small work' talk such nonsense as to say that 'the safeguards provided against the excessive toil of women in mines were weakened'? It is no question of 'excessive toil.' 'Toil,' on the part of female miners, underground, was to cease altogether, and it did cease.

In introducing the bill, Lord Ashley said:—'The next point is the exclusion of all boys under thirteen years of age; and this, I confess, may be looked upon as my weak point.'[4]

Sir James Graham, the Home Secretary, said that 'on

[1] Lord Campbell, a member of Lord Melbourne's Administration Hansard's *Parl. Debates*, third series, vol. lxv. 1100.
[2] *Ibid.* [3] 5 & 6 Vict. cap. 99.
[4] Hansard's *Parl. Debates*, third series, vol. lxiii. 1339, 1340.

the part of Her Majesty's Government, he would give its full assent to the introduction of a bill embracing the principle of some limitation of age.' [1]

Lord Ashley himself proposed, in committee on the bill in the House of Commons, to substitute, in the second clause, 'ten' for 'thirteen.' It thus came to pass that the word 'ten' was substituted for 'thirteen' *before* the bill went up to the Lords! [2]

Sir James Graham said:—'The last point in the proposed bill of his noble friend referred to the binding, as apprentices, of parish children, and there, also, he agreed with him that pauper children should not be indiscriminately bound.' [3] And this was exactly what the Lords' amendments carried out! The measure was rendered symmetrical by fixing the same limit with regard to age in relation to apprenticeships as in relation to young persons working in a mine. With respect to females, the apprenticeship system was abolished altogether.[4]

My attention has been called to an article in the *Nineteenth Century* for April, 1894, written by a member of parliament, whom I have always looked upon with the greatest respect as a model representative of labour. But it is simply a re-hash of 'Fifty Years of the House of Lords,' pp. 59 and 60, and Mr. Spalding's 'House of Lords,' chap. x. pp. 107–117.

Mr. Burt reproduces,[5] almost word for word, the language of 'Fifty Years':—

'Fifty Years'	Mr. Burt, M.P.
'The safeguards provided against the excessive toil of young children and women in mines were weakened.'	'Amendments were there introduced, which weakened the provisions against excessive toil of women and children.'

But Mr. Burt also declares that, 'Fifty years ago, when Lord Shaftesbury—then Lord Ashley—brought forward his first

[1] Hansard's *Parl. Debates*, third series, vol. lxiii. 1358.
[2] *Ibid.* vol. lxiv. 426.
[3] *Ibid.* vol. lxiii. 1358, 1359.
[4] See Section 1 of the 5 & 6 Vict. cap. 99.
[5] *Nineteenth Century* for April 1894, No. 206, p. 548.

Mines Regulation Bill, his stoutest opponents were found in the House of Lords.' [1]

This, I confess, is new; the author of 'Fifty Years of the House of Lords' was much too shrewd a person to venture on such an outrageous statement in face of the extracts from the speeches of members of the two Houses which could be culled from Hansard.

The Mines Act, 1860
(23 & 24 *Vict. cap.* 151)

The author of the 'small work' assures us [2] that 'the House of Lords struck out of Lord Palmerston's Regulation Bill of 1860 the clauses extending to the children of the mine the educational facilities enjoyed by the children of the factory.'

'The children of the mine,' as the Earl of Shaftesbury pointed out,[3] when moving an amendment to the Mines Bill of 1872,[4] stood in a very different position from 'the children of the factory.' 'The boys themselves, employed in mines, had no relish for school after being confined as they were in the mines'; and he cited from the Return of the Inspector of Schools the following passage:—

'The boys are so drowsy after their work that it is difficult to gain their attention.' (And this was with the 'educational facilities' of the Mines Act of 1860, as amended by the House of Lords!)

The Radicals, when they attack the Lords with reference to the education question, do not, to use an equity phrase, 'come into court with clean hands.'

When the Conservative Home Secretary, Sir James Graham, in 1843, brought forward a bill for the education of factory children, it was defeated by the Radicals, who took alarm at the composition of the schools under the bill, although a majority of the seven trustees were to be elected by the ratepayers, the other three being the vicar and churchwardens.

[1] Mr. Thomas Burt, M.P., in the *Nineteenth Century* for April, 1894 p. 548.
[2] P. 60.
[3] Hansard's *Parl. Debates*, third series, vol. ccxii. 1869-73.
[4] 35 & 36 Vict. cap. 76.

'On the part of the Church,' said Sir James Graham, 'there has been great willingness to make concessions, amounting to sacrifices; but it has not been met in a corresponding spirit.'

'The really suffering parties,' said the Earl of Shaftesbury, then Lord Ashley, 'are the vast body of neglected infants, who are now consigned to an eternity of ignorance.'[1]

The alterations introduced into the Mines Bill of 1860 by the House of Lords had the assent of the Cabinet Minister who had charge of the bill in that House, the First Lord of the Admiralty, the Duke of Somerset.[2]

The alterations, too, only applied to boys between the ages of ten and twelve. Section 1 of the Act of 1860 provides that Lord Ashley's Act of 1842 should be read as if 'twelve' had been 'mentioned' in it, instead of ten. Section 2, the enactment on which the controversy arises, engrafted an exception on this, providing that, on certain 'conditions,' a boy over ten and under twelve might be employed in a mine or colliery, namely, 'if he could read and write, or if the mine-owner obtained a certificate from a competent schoolmaster that the boy had attended school at certain intervals during his employment.' Neither in the bill, as originally introduced, nor as amended in committee in the House of Commons, was there any stipulation that the mine-owner should educate the boy. In committee, Sir George Cornewall Lewis moved an amendment, providing that the certificate should specify that the boy had 'attended school for not less than five hours in one day during the week immediately preceding, exclusive of Sundays.'[3] The Lords substituted 'not less than twenty hours during the lunar month immediately preceding,' which was simply a reproduction of the provision in the original bill, before it was amended in committee in the House of Commons! On the consideration of the Lords' amendments, the Commons

[1] See the debates on this bill, which was founded on an address to the Queen, carried by Lord Ashley. Hansard's *Parl. Debates*, third series, vol. lxvii. 47–75, 114, 422, 1411; vol. lxviii. 1103–1130; vol. lxix. 1567–70; vol. lxx. 94.

[2] *Ibid.* vol. clx. 11.

[3] *Ibid.* vol. clix. 852.

did not adhere to their amendment, but substituted a new one, which now appears in the Act of 1860, 'not less than three hours a day for two days in the week immediately preceding,' so that the latest amendment is not a Lords' amendment at all, but a Commons' amendment![1]

The only other amendment was the substitution of the words 'or that' for 'secondly,' the phrase in the bill, clause 2, as it went up to the Lords. This amendment, like the other Lords' amendment, was accepted by the Duke of Somerset, the representative of Lord Palmerston's Government in the House of Lords; and the Commons, though they grumbled over it, made no attempt to restore the word 'secondly.' When the boy was able to read and write before he entered the mine, and the mine-owner obtained a certificate from 'a competent schoolmaster' that he could do so, the necessity for a second certificate, also from a competent schoolmaster, that the boy had attended school at regular intervals, was not very obvious; but, in any case, it is absurd to say, as the author of 'Fifty Years of the House of Lords' does, that that House 'struck out clauses of Lord Palmerston's Regulation Bill of 1860,' when the Lords actually restored clause 2 to its original shape!

Mr. Burt reproduces the language of the author of 'Fifty Years of the House of Lords,' without taking the trouble to verify his statements:—

'Fifty Years.'	Mr. Burt, M.P.
'The House of Lords struck out of Lord Palmerston's Mines Regulation Bill of 1860 the clauses extending to the children of the mine the educational facilities enjoyed by the children of the factory. Twelve years more had to pass before the Peers could be induced to pass an adequate measure for the education of pit-boys.'	'In 1860 the Lords struck out of Lord Palmerston's Mines Regulation Bill the clause designed to give to children employed underground the same educational facilities as those enjoyed by factory children. This delayed for a dozen years the provision for the education of pit-boys.'[2]

[1] Hansard's *Parl. Debates*, third series, vol. clx. 1756–7.

[2] Mr. Burt says (*Nineteenth Century* for April, 1894, p. 551): 'It will be easy to lay a solid groundwork of fact and argument, in assailing the Hereditary Chamber.' Then, why doesn't he do it?

The Mines Act, 1872
(35 & 36 *Vict. cap.* 76)

It will have been seen that the Lords turned the cumulative provision of the Mines Bill of 1860, in the case of boys between ten and twelve, into an alternative: a certificate of ability to read and write before entering the mine, or, a certain amount of schooling during specified intervals while in the mine-owner's employment. The House of Commons, in 1872, made no attempt to restore the cumulative provision. It left out the preliminary certificate of ability to read and write altogether; and merely strengthened the certificate of schooling. Every boy between ten and twelve employed in a mine shall attend school, said the bill of 1872, 'for at least twenty hours in every two weeks.'

The Lords' amendment to the schooling provision in the bill of 1860 was, as we have seen, 'twenty hours during the lunar month,' which the Commons turned into 'three hours a day for two days in the week.' The Commons, in 1872, reverted to the amendment of the Lords in 1860, substituting 'twenty hours in every two weeks' for their own 'three hours a day for two days in each week.' The only change was the insertion of 'in every two weeks' for 'during the lunar month.'

The House of Lords in 1872 adopted this modification of their own amendment in 1860 without a division—without even discussion![1]

The Mines Act of 1860, as we have seen, did not throw the expense of schooling on the mine-owner. The Mines Act of 1872, so far from throwing the expense of the education of the pit-boys on the mine-owner, expressly provides[2] that he may deduct from the boys' wages the sum which he pays for the boys' schooling.

The Ten Hours Clause

The Division Lists in 1844 are a refreshing study. In that year the Ten Hours Clause of the Earl of Shaftesbury (then Lord Ashley) was first carried, and then defeated.

[1] 'Clauses 8 to 11' (the Educational Clauses) 'agreed to.' Hansard's *Parl. Debates*, third series, vol. ccxii. 1880. [2] 35 & 36 Vict. cap. 76, sect. 9

In the division in which Lord Ashley carried his Ten Hours Clause, Mr. Gladstone's name will be found in the minority,[1] silently obstructing him. In the division in which Lord Ashley's Ten Hours Clause was defeated Mr. Gladstone's name will be found in the list of the majority.[2] Mr. Disraeli, the present Duke of Rutland (then Lord John Manners), Lord Norton (then Mr. Adderley), Mr. Ferrand, Mr. Henley, and other distinguished Tories, will be found supporting Lord Ashley's Ten Hours Clause.[3]

The Ten Hours Bill

On June 8, 1847, the royal assent was given to 'The Ten Hours Bill.'[4] This bill had been most bitterly opposed by the extreme Radicals, led by Mr. Hume. 'There was,' as Mr. Hume lamented,[5] 'a determination to carry the bill through the House of Commons.' The bill was carried by two to one. Amongst those who voted in its favour were Mr. Disraeli, the present Duke of Rutland (then Lord John Manners), the late Lord Hampton (then Sir John Pakington), and Mr. Newdigate; the late Lord Cardwell (then Mr. Cardwell), Mr. Bright, and Mr. Milner Gibson voted against it.

Mr. Sharman Crawford, himself a Radical, declared it to be his opinion that 'if ever an unfair and vexatious opposition had been offered to any measure in its passage through that House, it was the opposition offered to this bill.'[6]

The late Earl Russell (then Lord John Russell) trimmed his sails with the passing breeze, first voting against Ten Hours, and then steering back and voting in favour of it!

Mr. Roebuck attacked him vehemently for his 'faltering and wavering and unstatesmanlike conduct.'[7]

Lord John Manners (now the Duke of Rutland) assured the House[8] that the Conservatives had consistently supported

[1] Hansard's *Parl. Debates*, third series, vol. lxxiii. 1264.
[2] *Ibid.* vol. lxxiv. 1106. [3] *Ibid.* 1104.
[4] 10 & 11 Vict. cap. 29. 'An Act to limit the Hours of Labour of Young Persons and Females in Factories.'
[5] Hansard's *Parl. Debates*, third series, vol. xci. 142.
[6] *Ibid.* 1124. [7] *Ibid.* 1130. [8] *Ibid.* 1138.

the bill 'from an earnest conviction of its being an act of justice to the factory operatives.'

Mr. Gladstone's name does not appear in any debate on this bill, nor in any of the numerous divisions. And yet this was a measure of vital moment to the working-classes! How different was the conduct of the Peers![1]

I must be pardoned for the warmth with which I have written on this subject. The very first time that I opened my lips in the House of Commons I brought forward a motion in favour of extending Factory Legislation to print-works, and obtained a pledge from Mr. Bruce, on behalf of the Government of the day, to introduce a measure for that purpose.[2]

Lord John Manners (now Duke of Rutland), who had been chairman of a committee on the subject, energetically supported my motion.[3]

Mr. Bruce (now Lord Aberdare) subsequently introduced and carried a Print Works Act, 33 & 34 Vict. cap. 62, in fulfilment of his pledge to me.[4]

The Union of Church and State

The writer of the 'small work' proceeds upon certain suppositions of his own, which show that he has not grasped the most elementary principles of the British Constitution.

The only institution in this country which is older than the monarchy is the Church of England. Its fibres are interwoven with the Constitution. Long before the mission of Augustine the early British Church flourished in Wales; and Mr. Gladstone, in my hearing in the House of Commons, on Mr. Watkin Williams' motion for the disestablishment of the Church in Wales,[5] and again, more recently, has acknowledged that the Church in Wales is the lineal descendant of the early British Church.

[1] See Chapter XIX. *supra*.

[2] Hansard's *Parl. Debates*, third series, vol. cxciv. 1535-1538. *Times*, March 17, 1868.

[3] *Ibid.* 1540, 1541.

[4] *Ibid.* 1542.

[5] Defeated by a majority of 164—209 to 45. *Ibid.* vol. cci. 1274-1306 (1870).

'The House of Lords,' said one Griffiths at Leeds,[1] 'has refused rights to Jews and Roman Catholics, and has excluded dissenters from the Universities, refused to abolish the obnoxious church rates, closed the churchyards against the Nonconformists.' 'So has the House of Commons,' says 'a Liberal,' in the *Times*. 'But the House of Commons, grown wiser, has granted equal rights to Jews and Catholics, has admitted dissenters to the Universities, has abolished church rates, has opened the churchyards to the nonconformists. *So has the House of Lords.* Condemn both Houses for their past or neither.'[2]

The opposition of the House of Lords to the removal of Jewish,[3] and Roman Catholic Disabilities,[4] the University Tests Bill,[5] the Abolition of Church Rates Bill,[6] and the Burials Bill,[7] all proceeded from a desire to preserve to this country the inestimable benefit of a National Church—the recognition of the great principle that a nation owes duties to Almighty God, as well as the individuals of whom the nation is composed.

But on every one of these questions the House of Lords ultimately gave way, when they found that a majority of the people's representatives (having changed their minds upon these subjects) insisted, again and again, on pressing them forward.

The 'little work' seems to blame the Peers for resisting these infringements of the principle of the Union of Church and State, and then to blame them for ultimately giving way!

No conduct could be more constitutional. The Peers were bound to see that these infringements of a cardinal principle were approved by the nation before accepting them. To have accepted them at once would have been a betrayal of their trust, as hereditary councillors of the Crown.

[1] June 20, 1894, at the so-called 'Conference' on the House of Lords. *Daily Chronicle*, June 21, 1894.
[2] 'A Liberal,' writing to the *Times*, June 22, 1894.
[3] *Fifty Years of the House of Lords*, pp. 43, 44.
[4] *Ibid.* pp. 27, 28, 58, &c.
[5] *Ibid.* pp. 40–42.
[6] *Ibid.* pp. 42, 43.
[7] *Ibid.* pp. 39, 45.

Removal of Jewish Disabilities

We have seen [1] that, so far as these disabilities arose from the insertion of the words 'on the true faith of a Christian' in the new declaration under the Act of 1828 for the Repeal of the Test and Corporation Acts, the exclusion was purely accidental. We have also seen [2] that the first bill for the removal of Jewish disabilities [3] was defeated in the Commons by a substantial majority.

1. *Removal of the Disqualification of Jews for Municipal Offices*, 1845
(8 & 9 *Vict. cap.* 52)

In 1840, Lord Lyndhurst, the distinguished Tory and ex-chancellor, presented a petition to the House of Lords from Mr. David Salomans,[4] who stated that he had filled the office of Sheriff of London and Middlesex. He explained that a member of the Jewish persuasion might be Sheriff of London and Middlesex, but not an Alderman of the City of London. He had been elected in 1835 an Alderman of the City of London; but, in consequence of his refusal to subscribe the declaration required by the Act of 9 George IV. cap. 17, his election was declared void, and another gentleman was elected in his stead. The petitioner then applied to the Court of Queen's Bench for redress, and that Court decided that he ought to have been sworn in; but this decision was reversed on appeal by the Court of Exchequer Chamber. The petitioner now prayed their lordships that he might be permitted to make the declaration required by the Act 1 Victoria, cap. 5,[5] instead of subscribing the declaration rendered necessary by the Act 9 George IV. Lord Lyndhurst said 'it appeared to him that there was no reason why a gentleman of the Jewish persuasion should not be a member of a Town Council, either as a coun-

[1] Chapter XVIII. *supra*. [2] *Ibid*. [3] In 1830.
[4] Hansard's *Parl. Debates*, third series, vol. lv. 718-720.
[5] The words 'upon the true faith of a Christian' were omitted by Quakers, Moravians, and Separatists.

cillor or alderman. If he should receive the concurrence of their Lordships, he would bring in a bill to carry into effect the object of the petition.' [1]

Sir Theodore Martin explains [2] why it was that Lord Lyndhurst was unable to carry out his intention of introducing such a bill in 1841 :—'He was disabled by a severe attack of illness in the early part of the session from taking his usual active part in the business of the House of Lords.'

The bill was introduced into the House of Commons on February 9, 1841, and Mr. Divett explained [3] that it was founded on a petition of Mr. Salomans, similar to the one presented by Lord Lyndhurst, in 1840, to the Lords.

Mr. Gladstone spoke against the bill ; [4] and followed up this speech by voting against the second reading, forming one of a little band of 'stalwarts.' [5]

Nor was this all. Mr. Gladstone himself moved the rejection of the bill on the third reading, and acted as 'teller.' [6] He made a long speech which occupies some seven columns of Hansard (!) [7] in moving the rejection of the bill.

'The test,' he said, 'for office is at present a Christian test—this test the bill goes to remove and to annul. Is not this to un-Christianise ? As guardians of the Constitution, and of the principles on which it is based, I do not see how we can hold that the Jews, generally speaking, can be in the position of having the necessary qualification. When I am asked to surrender a great principle of the Constitution—for to that it amounts—I have a right to consider who are those who ask me—those who, as conscientious men, reject Christianity as a fable and imposture.'

Notwithstanding this eloquent appeal, the House of Commons read the Bill of 1841 a third time by a majority of 77.[8]

The bill was read a first time in the House of Lords the

[1] Hansard's *Parl. Debates*, third series, vol. lv. 718, 719.
[2] *Life of Lord Lyndhurst*, chap. xv. p. 389.
[3] Hansard's *Parl. Debates*, third series, vol. lvi. 504, 505.
[4] *Ibid.* 506, 507.
[5] 'Ayes' 137, 'Noes' 24 ; majority 113. *Ibid.* vol. lvii. 99, 100.
[6] *Ibid.* 768. [7] *Ibid.* 754–760.
[8] *Ibid.* 767. 'Ayes' 108, 'Noes' 31.

next day, and a second time on June 8.[1] The then Marquess of Bute had charge of it. The third reading was moved on June 11.

The Bishop of St. David's delivered a brilliant speech in support of the bill[2]—his 'maiden speech.' 'This measure,' he said, 'I conceive to be one of liberal policy, or of politic liberality.'

He was followed into the lobby of the 'Contents' by four other lords spiritual, the Bishop of Durham, the Bishop of Ely, the Bishop of Lichfield, and the Bishop of Norwich.[3]

An extremely important step was taken in 1845. The 8 and 9 Vict. cap. 52, passed in that year, provides that every person of the Jewish persuasion shall be permitted to make and subscribe within one calendar month next before or upon his admission into the office of mayor, alderman, recorder, bailiff, common councilman, councillor, chamberlain, treasurer, town clerk, or any other municipal office in any city, town corporate, borough or cinque port, within England and Wales, the declaration contained in the Act for the Repeal of the Test and Corporations Acts, omitting the words 'on the true faith of a Christian.' This enactment passed the House of Lords by a unanimous vote.[4] The only opposition to it came from the House of Commons.

Sir Robert Peel, the Conservative Prime Minister, who moved the second reading in the House of Commons, said[5]:—

'The House of Lords, the authority which inserted the words "on the true faith of a Christian," now sends us down a bill which removes the difficulty, and permits the acceptance of office by the Jew. I submit to the House that we, who had not insisted on the insertion of those words, can hardly reject

[1] Hansard's *Parl. Debates*, third series, vol. lviii. 1049.

[2] *Ibid.* 1452–1455.

[3] *Ibid.* 1458. The bill was rejected, on the third reading, by a majority of 34. 'Content' 64, 'Not Content' 98.

[4] It was introduced first into the House of Lords, its sponsor being Lord Lyndhurst, who again filled the office of Lord Chancellor, and he moved the second reading 'in a lucid speech.' *Annual Register* for 1845, p. 196; Hansard's *Parl. Debates*, third series, vol. lxxviii. 515–527, 775, 835, 886.

[5] *Ibid.* vol. lxxxi. 626.

the proposition now voluntarily made by the House of Lords, that the words which constituted the difficulty be omitted.'

Nevertheless, it was only after a division on the second reading, and another on the third reading, and long debates, that the House of Commons finally accepted this measure of relief for the Jews, which had come down to them with the unanimous approval of the House of Lords![1]

2. *Jewish Emancipation Act*, 1858 (21 & 22 *Vict. cap.* 49)

Referring to 'the struggle for Jewish emancipation,' the author of 'Fifty Years of the House of Lords' says[2] that 'in 1858 the contest between the two Houses, which had been carried on for a period of twenty-five years, came to a close.'

Mr. Spalding says,[3] 'that for twenty-five years the Lords refused to allow the law to be so altered as to permit a Jew to sit and vote in parliament.'

Mr. Walpole, however, has pointed out that for more than half this period—i.e. from 1833 to 1847—fourteen years—the question of the admission of Jews into parliament was purely an academical or abstract one:—

'For many years the division of opinion between the two Houses created no practical interest. No county or borough in the United Kingdom selected a Jew as its representative. The debates which Grant and others raised consequently only seemed of abstract importance, and little inconvenience resulted from the contrary views of Lords and Commons.'[4]

Jews Disabilities Relief Bill	Passed by the Commons, rejected by the Lords.
1841. Ditto.	Ditto.[5]

Anyone would imagine that Mr. Spalding was alluding to the same kind of bill as the bills alluded to previously, i.e. the

[1] Hansard's *Parl. Debates*, third series, vol. lxxxii. 642, 870.
[2] Pp. 43, 44. [3] *House of Lords*, p. 212.
[4] *History of England*, vol. iv. chap. xx. p. 343.
[5] *The House of Lords; a Retrospect and a Forecast*, appendix, pp. 262, 265.

Bills of 1833, 1834, and 1836, for enabling a Jew to sit and vote in parliament; but the Bill of 1841 is a bill to carry out Lord Lyndhurst's proposals in 1840!

In 1847 the admission of Jews into parliament became, for the first time, a practical question. At the general election in July, a member of the Hebrew persuasion—Baron Lionel de Rothschild—was returned member for the City of London.[1] The Prime Minister, Lord John Russell, was at the head of the poll; and, in the next month after the assembling of the new parliament, he introduced a 'Jewish Disabilities Removal Bill.'

The author of 'Fifty Years of the House of Lords' is inaccurate in his statement[2] of the majority for this bill in the House of Commons:—

Date	Commons—For	Lords—Against
1848	97	35

If we take the second reading as a test, the majority was 73.[3] If we take the third reading as a test, the majority was 61.[4] The majority of 97 was on an amendment moved in committee.[5]

Two brilliant speeches were delivered in relation to this bill, one by the Bishop of St. David's in the House of Lords,[6] the other by Mr. Disraeli in the House of Commons, both in support of the bill.

Mr. Disraeli was very caustic in his remarks upon Mr. Gladstone's sudden announcement of his conversion to the principle of admitting Jews into parliament.[7] Mr. Gladstone had based it mainly on the passing of the 'Jews' Declaration Act' of 1845:—

'The right hon. gentleman gave us a philosophical description of the consecutive development of circumstances in this country, which rendered it, in his opinion, politic, and even necessary, to support the proposition of the noble lord,[8] though, at the same time, he seemed to conceive that a state of affairs

[1] The figures are given in the *Annual Register* for 1847 (Chronicle), p. 95.
[2] P. 43. [3] Hansard's *Parl. Debates*, third series, vol. xcvi. 536.
[4] *Ibid.* vol. xcviii. 667. [5] *Ibid.* vol. xcvii. 1246.
[6] *Ibid.* vol. xcviii. 1351. [7] *Ibid.* vol, xcv. 1282, 1292, 1293,
[8] Lord John Russell.

might exist which would be more agreeable to his feelings and more consentaneous to his wishes.' And he continued:—'I agree with the noble lord the member for Bath'—(Lord Ashley)[1]—'in considering this a religious question. For who are these persons professing the Jewish religion? They are persons who acknowledge the same God as the Christian people of this realm. They are, humanly speaking, the authors of your religion. Has not the Church of Christ made the history of the Jews the most celebrated history in the world? On every sacred day you read to the people the exploits of Jewish heroes, the proofs of Jewish devotion, the brilliant annals of past Jewish magnificence. Over every altar we find the tables of the Jewish law. Every Sunday—every "Lord's Day"—if you wish to express feelings of praise and thanksgiving to the Most High, or if you wish to find expressions of solace in grief, you find both in the words of Jewish poets. Yes, it is as a Christian that I will not take upon me the awful responsibility of excluding from the legislature those who are of the religion in the bosom of which my Lord and Saviour was born.'[2]

This magnificent speech will remain, for all time, as a monument to the genius of the future Tory prime minister and peer.

In an excellent 'maiden speech,' the Duke of Argyll supported the bill.

Baron de Rothschild, tired of waiting for an act of parliament to admit him, suddenly presented himself at the table of the House of Commons, and demanded to be sworn, at a morning sitting, on July 26, 1850.

The Clerk at the table:—'What oath do you desire to take? The Protestant or the Roman Catholic?'

Baron de Rothschild:—'I desire to be sworn on the Old Testament.'

Mr. Speaker:—'I direct you to withdraw.'

[1] Lord Ashley, in the House of Commons, always opposed the admission of Jews into parliament. As Earl of Shaftesbury his views were the same, for a long time.

[2] Hansard's *Parl. Debates*, third series, vol. xcv. 1321–1330.

A scene of great animation followed, in the course of which Lord John Russell, the prime minister, said:—

'Up to last night no one expected that Baron de Rothschild would claim his seat.'

In a fit of generous emotion it was decided that Baron de Rothschild should be called in, and sworn on the Old Testament, as most binding on his conscience; but here a new difficulty arose. The baron declined to repeat after the Clerk at the table the words which formed part of the oath of abjuration—'on the true faith of a Christian.' The House found that it could not override the law of the land; and passed the following resolution, which was moved by the Liberal Attorney-General, and supported by a majority of seventy-four votes[1]:—

'That the Baron Lionel Nathan de Rothschild is not entitled to vote in this House or to sit in this House during any debate, until he shall take the oath of abjuration in the form appointed by law.'

In 1851, Mr. Ald. Salomans was elected member for Greenwich. Mr. Osborne (himself of Jewish extraction) moved that Mr. Salomans was entitled to take his seat. This was negatived by 229 to 81—a majority of 148.[2]

Lord John Russell, the staunch champion of the removal of the civil disabilities of the Jews, moved that Mr. Salomans 'withdraw.' This was carried by 231 to 81—a majority of 150; but Mr. Salomans had to be conducted to the bar by the serjeant-at-arms![3]

Notices of actions for penalties were served on Mr. Salomans for having sat and voted in the House![4] Lord John Russell, as prime minister, felt himself bound to uphold the law, and moved the following resolution:—

'That Mr. Salomans is not entitled to vote in this House, or sit in this House during any debate, until he shall take the oath of abjuration in the form appointed by law.' This was carried by 123 to 68—a majority of 55.[5]

[1] Hansard's *Parl. Debates*, third series, vol. cxiii. 297, 309, 453, 770, 771, 811, 813. [2] *Annual Register* for 1851 (History), p. 169.
[3] *Ibid.* p. 170. [4] *Ibid.* p. 173. [5] *Ibid.* p. 175.

Mr. Bowen-Graves, in his 'Forty Years of the House of Lords,'[1] has a not very complimentary allusion to Baron de Rothschild and Mr. Ald. Salomans:—

'The sensational performance with which Baron Rothschild and the Reforming Party favoured the House of Commons in 1850 offered a solution which the House, very properly, declined to admit.' 'The solemn constitutional farce which had been enacted by Baron Rothschild was repeated next session, with variations and additions, by Ald. Salomans.'

In 1857 there was a general election, and Baron de Rothschild was returned for the City, once more.[2]

The majority of '140,' however, which the author of 'Fifty Years of the House of Lords' mentions,[3] was not obtained on any of the great stages of the bill of this year; it was on an amendment moved in committee by Sir Frederick Thesiger.[4]

Seven prelates voted in person, or by proxy, in favour of the bill in the House of Lords.[5]

The aged Lord Lyndhurst, the Tory ex-chancellor, made an eloquent appeal on behalf of the bill.[6]

The bill was, however, rejected by a majority of 32.[7]

Eleven days after the rejection of the bill,[8] Lord John Russell moved for, and obtained leave to introduce, a bill entitled 'The Oaths Validity Amendment Bill.' It purported to be a bill to amend the Statute 1 and 2 Vict. cap. 105—'An Act for removing Doubts as to the Validity of certain Oaths'—and its object was to extend that enactment to oaths taken in parliament. The enactment, which only consists of a single section, declares that an oath is binding 'provided the same shall have been administered in such form and with such ceremonies as the person taking it may declare to be binding.'

In the course of the debate Lord John Russell observed:—

[1] *Fortnightly Review* for February 1873, pp. 236, 237.
[2] *Annual Register* for 1857 (Chronicle), p. 141. [3] P. 43.
[4] Hansard's *Parl. Debates*, third series, vol. cxlv. 1857.
[5] *Ibid.* vol. cxlvi. 1275, 1276. [6] *Ibid.* 1236–1248.
[7] *Ibid.* 1275. [8] I.e. on July 21, 1857. [9] *Ibid.* vol. cxlvii. 135–147.

'It may be said that this House has—I believe it has—the power, if it should think fit to exercise it, of stating by a resolution, that the words "on the true faith of a Christian" are not part of the substance of the oath, and that Baron de Rothschild being admitted to the table shall take the oath in the form binding on his conscience.' He (Lord John) at the same time intimated that the adoption of such a course might lead to a conflict between the House of Commons and the Courts of Law. It was for this reason that he preferred to bring forward 'The Oaths Validity Amendment Bill,' which would, of course, require the sanction of the whole legislature to make it efficacious.

Before any further progress was made with this new bill, Lord John Russell, on August 3, 1857, moved for a Select Committee to consider whether the 5 & 6 Will. IV. cap. 62 is applicable to oaths appointed by law to be taken by members of this House at the table previously to their taking their seats, and in what manner the said act can be so applied.[1]

The act (sect. 8) stated that it shall be lawful for the Universities of Oxford and Cambridge, and for all other bodies corporate and politic, and for all bodies, now by law or statute, or by any valid usage, authorised to administer, or receive, any oath, to make statutes, bye-laws, or orders, authorising the substitution of a declaration in lieu of an oath, now required to be taken, or made.

The committee reported on August 10 that 'the House of Commons is not included within the 8th section of the 5 & 6 Will. IV. cap. 62.'

Lord John Russell:—'I beg to move that the order for the second reading of the Oaths Validity Amendment Bill be discharged.'[2] Agreed to.

'In 1858,' the author of 'Fifty Years of the House of Lords' says,[3] 'the Lords, after a vain attempt to mar the bill, gave way.'

This is not correct.

Anyone reading the passage would imagine that the

[1] Hansard's *Parl. Debates*, third series, vol. cxlvii. 933–940.
[2] *Ibid.* 1287.
[3] P. 44.

Lords were compelled by the action of the House of Commons to reinstate the clause in the Jewish Disabilities Bill which enabled Jews to take the oath, with the omission of the words 'upon the true faith of a Christian.' This clause was clause 5, 'Form of Oath for Persons professing the Jewish Religion.' On the motion for agreeing to the fifth clause the then Lord Chancellor (Lord Chelmsford) moved the omission of the clause. This was carried by a majority of 39.[1]

When the bill came back to the House of Commons, Lord John Russell moved to disagree with the Lords' amendment, omitting clause 5. This was carried by a majority of 113.[2] But the House of Lords, when the Commons' amendments came to be considered, adhered to their amendment, omitting clause 5.[3] 'The Lords,' said the Earl of Derby, 'would still insist on their objections to the clause, that Jews should sit, not only in the Commons, but also in their Lordships' House.'[4] When the Lords' amendments, insisting on the omission of clause 5, came back to the Commons, Lord John Russell moved the following resolution:—

'That this House doth not insist upon its disagreement with the Lords in their amendments to the bill.'

This resolution was carried unanimously.[5]

The oath prescribed for members of parliament by the Oaths Act, 1858,[6] contains the very words which Baron de Rothschild and Mr. Salomans objected to, 'upon the true faith of a Christian'!

How did the question of the admission of Jews into the House of Commons come to be amicably settled?

An Irish representative peer, General the Earl of Lucan, had not been unobservant of Lord John Russell's futile efforts in the latter part of the previous session. A happy idea, however, occurred to him of saving the dignity of both Houses, without any sacrifice of principle, by rendering that legal which Lord John Russell had asserted that the House of

[1] 119 to 80. Hansard's *Parl. Debates*, third series, vol. cxlix. 1794.
[2] 263 to 150. *Ibid.* vol. cl. 347.
[3] By 80 to 63; majority 12. *Ibid.* 1176.
[4] *Ibid.* vol. cli, 729.
[5] *Ibid.* 1905, 1906.
[6] 21 and 22 Vict. cap. 48, sect. 1.

Commons had power to do, 'of stating by resolution that the words "on the true faith of a Christian" might be omitted from the oath,' without impairing its validity. This idea first took the form of an amendment and then of a bill known as 'The Jews Bill,' which now forms the Statute 21 & 22 Vict. cap. 49. 'The Jews Bill' was carried through both Houses of Parliament by considerable majorities.[1]

The then Prime Minister (Lord Derby) thus explained the Jews Bill of 1858:—'If you proceed, as proposed by the present bill, retaining your objections, and the reasons why you think it unadvisable, but, at the same time, deferring, I will not say, to the authority, but to the opinion of the House of Commons, if you permit them to pass a resolution allowing the Jew to enter that House, and that House only, by the omission of certain words required by law, the resolution is only good and valid so long as it remains unrescinded by the House of Commons; and the resolution is only good and valid during the parliament that passes the resolution.'[2]

Lord John Russell, instead of sneering at the House of Lords, as Mr. Spalding does,[3] complimented them on the course which they had taken:—'I think great credit is due to those who, in the House of Lords, have believed that it was their duty to prevent the embarrassment of a conflict between the House of Commons and the Courts of Law, and who have done at once that which might otherwise have been the result of a long and dangerous controversy. I allude to those members of the House of Lords who, though they had previously voted against the Jews, and opposed every legislative measure on their behalf, conceived that there might be a mode of relieving the two Houses from this difficulty which would not be repugnant to the feelings of the House of Lords, and which, at the same time, would satisfy the wishes so long expressed by the House of Commons.'[4]

[1] 143 to 97, majority 46; second reading, House of Lords. 156 to 65, majority 91; second reading, House of Commons.
[2] Hansard's *Parl. Debates*, vol. cli. 926.
[3] *House of Lords*, pp. 214, 215.
[4] Hansard's *Parl. Debates*, third series, vol. cli. 1374.

Removal of Roman Catholic Disabilities

This is a question which I have dealt with in previous chapters.[1]

1. *The Penal Laws Repeal Act*, 1844
(7 & 8 *Vict. cap.* 102)

'The Penal Laws Repeal Bill of 1844, after being passed by the Commons, was sent up to the Lords in July. When it came before the House of Lords it was so vehemently opposed by the Bishop of London, that the Lord Chancellor was compelled to remodel the measure by leaving out "the objectionable clauses." Even this did not remove the objections of the bishop, but the expurgated bill was allowed to pass into law.'

'In 1845 an attempt was made to complete the work of repeal, but the same House of Commons which had sent up the Comprehensive Measure the previous year refused, by a majority of 89 to 47, to once more send up "the objectionable clauses" to the House of Lords.'[2]

There is here contained a charge of gross inconsistency against the House of Commons, which has no foundation in fact. The House of Commons did not 'send up the Comprehensive Measure' in 1844. The Bill of 1844 originated in the House of Lords, the Bill of 1845 originated in the House of Commons! The House of Commons passed the Bill of 1844, minus 'the objectionable clauses'; it 'refused' to 'send up' 'the objectionable clauses' in 1845. Where is the inconsistency?

This beneficent bill passed through all its stages in the House of Lords without a single division.

The bill was supported by the Tory Chancellor, Lord Lyndhurst, and when it reached the Commons the Tory Premier, Sir Robert Peel, moved the second reading of the bill. It repealed portions of 'the Acts of Uniformity' of

[1] See Chapter XVIII. (the Georges) and Chapter XIX. (William the Fourth).

[2] *Fifty Years of the House of Lords*, pp. 27, 28.

Edward VI., Elizabeth, and Charles II.,[1] enough, one would think, to alarm a spiritual peer. The idea of a bishop 'compelling Lord Lyndhurst to remodel the measure' is good. I should like to see a cartoon of the Bishop of London browbeating the Chancellor! The bishop succeeded in saving three essential clauses of the 'Catholic Emancipation Act'[2] from repeal. The report of the Criminal Law Commissioners to Her Majesty's Government stated that, 'so far from these clauses being penal, they were recent enactments, forming part of the policy deliberately adopted by the legislature, as necessary safeguards, when passing the Relief Bill.'[3]

It only shows with how little loyalty such 'safeguards' are adhered to, that Mr. Redington, a Roman Catholic member, twitted Sir Robert Peel, the author of 'Emancipation,' just fifteen years after it had been carried, with not having repealed its 'safeguards' long before![4]

Why the author of 'Fifty Years of the House of Lords' should have specially mentioned these two bills under the head of 'The Irish Roman Catholics,' I know not. The Act of 1844 did not touch the *Irish* Penal Laws.[5] The Bill of 1845 did not apply to Ireland at all! Why, then, does the writer preface his allusion to these bills by 'buncombe' about 'the difficulty of doing justice to Ireland through such an instrument as the House of Peers?'

The Roman Catholic Oath

'Lord Derby secured the rejection by a majority of 84 to 68 of the Bill relieving Roman Catholics from the Oath of Abjuration imposed on their Representatives in Parliament.'[6]

[1] *5 & 6* Edwd. VI. cap. i.; 1 Eliz. caps. 1 and 2; 13 and 14 Car. II. cap. 4.

[2] 10 Geo. IV. cap. 7. sects. 24, 26, and 28. Hansard's *Parl. Debates*, third series, vol. lxxxii. 280, 281.

[3] Hansard's *Parl. Debates*, third series, vol. lxxxii. 283 (Sir James Graham, Secretary of State for the Home Department).

[4] *Ibid.* 284.

[5] 'Mr. Harold Spender is so ignorant, that he (*House of Lords*, p. 18) speaks of the act as one for the repeal of the hideous system of *Irish* penal laws.'

[6] *Fifty Years of the House of Lords*, p. 29.

This is the oath prescribed by the Roman Catholic Relief Act of 1829,[1] the taking of which formed an essential condition of Catholic Emancipation. It was substituted for the oath against Transubstantiation, which excluded Roman Catholics from parliament, and it received the deliberate assent, at the time, of the heads of the Roman Catholic Church. Indeed, the very terms of the oath were suggested by them.[2] Lord Derby was a member of the House of Commons in 1829, and was a supporter of the Roman Catholic Relief Bill (his name appears in the list of the 'Ayes'[3]), and he moved the rejection of this bill in order to maintain the settlement then arrived at. At the same time he expressed his entire willingness to omit from the oath those expressions which were considered offensive by Roman Catholics, but this offer was declined by the Government.

It was not obscurely hinted that this bill was introduced by a private member on the eve of a general election, in order to manufacture political capital for the government, of which he was a supporter.

Although the Protestant oath was changed by the 21 & 22 Vict. cap. 48, one oath being substituted for the oaths of allegiance, supremacy, and abjuration, it was not till the 29 & 30 Vict. cap. 19[4] that the oath prescribed by the Catholic Emancipation Act was changed, a single oath being provided by that statute for members of all religious denominations (including Jews).

The Magistracy

The author of 'Fifty Years of the House of Lords' complains[5] of the small number of Roman Catholics on the Irish Bench in 1880. Well, this has since been remedied, with a vengeance, by Mr. Morley. Hundreds of persons have been

[1] 10 George IV. cap. 7, sect. 2.

[2] Mr. Harold Spender calls this 'an oath inconsistent with the conscientious convictions of Catholic members of parliament.' *The House of Lords, who they are, and what they have done*, p. 18.

[3] Hansard's *Parl. Debates*, new series, vol. xx. 1635.

[4] May's *Parliamentary Practice*, 10th edition, chapter vii. pp. 156, 159; 21 & 22 Vict. cap. 48, sect. 6. See 31 & 32 Vict. cap. 72.

[5] P. 25.

placed upon the Bench who, under ordinary circumstances, would not have been placed there. They have been placed there simply and solely because they are Roman Catholics.[1]

The Abolition of University Tests defeated in the Commons

I have already dealt with the question of the Abolition of University Tests in the reign of King William IV.[2]

Mr. Christie, on May 25, 1843, moved for leave to bring in a bill 'to abolish certain oaths and subscriptions in the Universities of Oxford and Cambridge, and to extend education in the Universities to persons who are not members of the Church of England.'[3]

Leave to introduce the bill was refused by the House of Commons by a majority of 70![4] Mr. Gladstone's name appears in the list of the majority.[5]

On May 23, 1844, Mr. Christie 'rose to move an address to Her Majesty, praying that she would be graciously pleased to issue a commission to inquire into (amongst other things) the present general condition of the Universities of Oxford and Cambridge as regards religion.' The hon. member was proceeding to address the House in support of his motion, when the House was 'counted out'![6]

Next day Mr. Christie complained of this, and said he saw Mr. Gladstone[7] 'come into the House, dressed for dinner,' and 'leave the House before it was counted out'![8]

In 1845 Mr. Christie, according to promise,[9] moved a similar address to the Queen.[10] He was defeated by 143 votes to 82.[11] Mr. Gladstone's name appears in the list of his opponents.[12]

After these repeated rebuffs from the representatives of

[1] Just as all kinds of persons have been placed upon the *English* bench, simply and solely because they are Gladstonians.
[2] Chapter xix. *supra.*
[3] Hansard's *Parl. Debates*, third series, vol. lxix. 855.
[4] 'Ayes' 105, 'Noes' 175. *Ibid.* 913.
[5] *Ibid.* 917. [6] *Ibid.* vol. lxxiv. 1459.
[7] Then President of the Board of Trade and Master of the Mint.
[8] Hansard's *Parl. Debates*, third series, vol. lxxiv. 1466.
[9] *Ibid.* 1467. [10] *Ibid.* vol. lxxix. 393–415. [11] *Ibid.* 453. [12] *Ibid.* 454.

the people, the advocates of the Abolition of University Tests abandoned the 'attack' for six years.

On June 19, 1851, Mr. Heywood moved [1] that 'the House resolve itself into a committee to consider the religious tests originally imposed, either by the authority of the Crown, or by act of parliament, as a qualification for any civil corporate privilege in the Universities of Oxford, Cambridge, and Dublin.' [2]

Lord John Russell made a remarkable speech while opposing Mr. Heywood's motion:—'There is the greatest distinction between admitting persons dissenting from the Church to study at the University, and obtain a degree, and admitting them to become part of the governing body of the University by receiving fellowships or the offices which belong to it. If this last concession were made, I am afraid it would introduce confusion in the discipline of the University. I cannot see how persons differing so much in their views could co-operate harmoniously in carrying on the system of government and that discipline which is absolutely necessary for the welfare of the University. I cannot give my assent to this motion.' [3]

It is important to remember who was speaking—the greatest advocate of civil and religious liberty in this century.

No division was taken. The House was 'counted out'! [4]

Oxford University Act, 1854
(17 & 18 *Vict. cap.* 81)

'The Peers reluctantly accepted a bill enabling dissenters to take degrees at Oxford, and study at their own private halls; but the concession was carefully limited by amendments, shutting out nonconformists from all offices hitherto reserved for churchmen qualified by a University degree.' [5]

The enactments to which the writer of the 'small work'

[1] Hansard's *Parl. Debates*, third series, vol. cxvii. 1000–1003.
[2] Mr. Heywood mentioned, with reference to the University of Dublin, that an act was passed in 1793 opening degrees to all denominations. *Ibid.* 1002.
[3] *Ibid.* 1006–1008.
[4] *Ibid.* 1009.
[5] *Fifty Years of the House of Lords*, p. 41.

refers are contained in the 43rd and 44th sections: 'It shall not be necessary for any person, upon matriculating in the University of Oxford, to make or subscribe any declaration, or to take any oath, any law or statute to the contrary notwithstanding.' 'It shall not be necessary for any person, upon taking the degree of Bachelor in Arts, Law, Medicine, or Music, in the University of Oxford, to make or subscribe any declaration, or to take any oath, any law or statute to the contrary notwithstanding; but such degree shall not, as such, constitute any qualification for the holding of any office which has been heretofore always held by a member of the United Church of England and Ireland, and for which such degree in the said University has heretofore constituted one of the qualifications, unless the person obtaining such degree shal have taken such oaths and subscribed such declaration as are now by law required.'

These two sections formed no part of the Oxford University Bill, as originally introduced. Lord John Russell, when introducing it, said[1]:—'I never, sir, would consent to any measure by which the discipline of the colleges—nay, more, the conduct of religious instruction in the colleges, and the attendance of Divine Worship—was in any way interfered with.'

As for the abolition of subscription to the Thirty-nine Articles on entrance, Lord John Russell said he was favourable to it. 'But,' he continued, 'I do not think it would have been wise in Her Majesty's government to have decided on placing any proposition of the kind in the present bill.'[2]

When the report stage was reached in the House of Commons, Mr. Heywood moved, as a new clause, the provision abolishing subscription at matriculation in the University of Oxford,[3] which now forms section 43 of the enactment. Mr. Gladstone both spoke[4] and voted[5] against Mr. Heywood's new clause. The whole of the members of the cabinet, indeed, in the House of Commons voted against it.[6]

[1] Hansard's *Parl. Debates*, third series, vol. cxxxi. 910.
[2] *Ibid.* 911.
[3] *Ibid.* vol. cxxxiv. 512–515.
[4] *Ibid.* 543–555. His speech occupies twelve columns of Hansard.
[5] *Ibid.* 587.
[6] Mr. Gladstone (Chancellor of the Exchequer), Viscount Palmerston

The new clause was carried against the Liberal Government by a large majority.[1]

The first paragraph of the second new clause, abolishing subscription on taking certain degrees, which now forms the first part of section 44 of the enactment, was then moved by Mr. Heywood; but was negatived, on a division, by a majority of 9.[2] All the members of the cabinet in the House voted against it.

Nothing daunted, Mr. Heywood moved the same paragraph, after the bill had been read a third time and before it passed.[3] The whole of the cabinet ministers in the House, Mr. Gladstone included, voted on this occasion with Mr. Heywood,[4] 'after,' as Mr. Gladstone said,[5] 'the unmistakable expression of the will of the House'![6]

Mr. Wigram then brought forward[7] a proviso very similar to that which forms the second paragraph of section 44; but, after some discussion, withdrew it.

The Earl of Derby expressed, on the second reading in the Upper House, his approval of the admission of dissenters to the University and to degrees, without subscription. At the same time he spoke of 'the inestimable advantage of having the two Universities of Oxford and Cambridge as nurseries for the Church of England.'[8]

The bill was read a second time in the House of Lords, without a division.[9]

In committee in the Lords the two new clauses passed unchallenged.[10]

When the Lords' amendments came down to the Lower House it was found that the proviso as to Church of England offices, which forms the latter part of section 44, had been

(Home Secretary), Sir James Graham (First Lord of the Admiralty), Sir Charles Wood (President of the Board of Control), Mr. Sidney Herbert (Secretary-at-War), and Lord John Russell.

[1] 252 to 161, majority 91. Hansard's *Parl. Debates*, third series, vol. cxxxiv. 585.

[2] 205 to 196; *ibid.* 590. [3] *Ibid.* 672–674. [4] *Ibid.* 891–893.

[5] *Ibid.* 888. [6] By defeating the new clause by a majority of 9!

[7] *Ibid.* 893–896. [8] *Ibid.* 1237, 1238.

[9] *Ibid.* 1241. [10] *Ibid.* 1360.

added; and, although the House of Commons disagreed with several of the Lords' amendments, that House unanimously accepted this proviso.[1]

Cambridge University Act, 1856 (19 & 20 *Vict. cap.* 88)

By section 45 of the 19 & 20 Vict. cap. 88,[2] 'No person shall be required, upon matriculating, or upon taking, or to enable him to take any degree in Arts, Law, Medicine, or Music, in the University of Cambridge, to take any oath, or make any declaration or subscription whatever; but such degree shall not, until the person obtaining the same shall in such manner as the University may, from time to time, prescribe, have subscribed a declaration stating that he is a *bonâ fide* member of the Church of England, entitle him to be, or become a member of the Senate, or constitute a qualification for the holding of any office either in the University or elsewhere, which has been heretofore always held by a member of the United Church of England and Ireland, and for which such a degree has heretofore constituted one of the qualifications.'

The Tests Abolition (Oxford) Bill defeated in the Commons

The author of 'Fifty Years of the House of Lords'[3] is quite in error when he says that 'in 1864 the House of Commons declared by a small majority that the sectarian monopoly of the national seats of learning should cease.'

The House of Commons in 1864, instead of so 'declaring,' did exactly the reverse. It threw out, by a small majority, the 'Tests Abolition (Oxford) Bill.' On the third reading there was a tie,[4] and Mr. Speaker declared himself with the 'Ayes,' to afford the House another opportunity of deciding

[1] Hansard's *Parl. Debates*, third series, vol. cxxxv. 859–862. The debate would seem to show that it applied only to schoolmasters.

[2] Royal Assent, July 29, 1856. [3] P. 41.

[4] Hansard's *Parl. Debates*, third series, vol. clxxvi. 675. 'Ayes' 170, 'Noes' 170.

the matter.[1] On the question that 'the bill do pass,' it was thrown out by a majority of 2.[2]

If the reader will scan the division lists, he will find amongst the opponents of the bill the then Chancellor of the Exchequer, Mr. Gladstone.[3]

University Tests Bills (1865 *to* 1870)

'In 1865 they repeated this declaration, but in neither case was the bill sent up to the Peers.'[4]

The Tests Abolition (Oxford) Bill of 1865 got through the second reading 'by a small majority';[5] so small, that its authors despaired of success; and a few days later withdrew the bill altogether.

Mr. Gladstone, who was still Chancellor of the Exchequer, voted against the bill once more.[6]

In 1864, as the bill was rejected by the Commons, it would have been a constitutional novelty 'to send it up to the Peers'!

In 1865 did the 'small majority' say that 'the sectarian monopoly of the national seats (*sic*) of learning should cease'? On the contrary, Mr. Dodson,[7] whose name was on the bill, said:—'Under the bill, the religious teaching of the University would continue to be the teaching of the Church of England.'[8]

'In 1866 the Commons carried the second reading of the Test Abolition Bill by a majority of 114; but the lack of time proved fatal to the further progress of the measure.'[9]

The secret of the largeness of this majority was indicated by Sir Stafford Northcote,[10] just after the division took place[11]:—'I wish to explain that, in the course of the day, I told a great many gentlemen on this side of the House that I did not intend to press the matter to a division; and they left the House

[1] Hansard's *Parl. Debates*, third series, clxxvi. 677.
[2] *Ibid.* 678; 173 to 171. [3] *Ibid.* 679.
[4] *Fifty Years of the House of Lords*, p. 41.
[5] 16—'Ayes' 206, 'Noes' 190. Hansard's *Parl. Debates*, third series, vol. clxxx. 247. [6] *Ibid.* 249. [7] Now Lord Monk Bretton.
[8] Hansard's *Parl. Debates*, third series, vol. clxxx. 215.
[9] *Fifty Years of the House of Lords*, p. 41.
[10] Afterwards Earl of Iddesleigh.
[11] Hansard's *Parl. Debates*, third series, vol. clxxxii. 715.

under the impression that there would be no division upon the question. I do not think the House has yet had an opportunity of expressing its sense as to the principle of the bill.' In a division in committee the majority was reduced by one half.[1] But the bill was withdrawn before any opportunity was afforded of testing its principle on the third reading.

The most noteworthy feature in connection with this bill was the appearance, as its sponsor, of a staunch churchman like the late Lord Coleridge, who said[2]:—'Yielding to no hon. gentleman in loyal gratitude to the Church of England, and to the University of Oxford, it is distinctly as a churchman, and a University man, that I venture to submit this bill to the favourable attention of the House.' Its principal feature was to enable nonconformists to take all degrees (except degrees of Divinity) without subscribing any test. The University of Cambridge allowed dissenters to take an 'M.A.' degree at this time; the University of Oxford stopped short of this, namely, at the 'B.A.' degree.

'It was not till 1867,' says Mr. Bowen Graves,[3] 'that Sir John Coleridge's bill found its way to the House of Lords.'

The Earl of Kimberley explained[4] 'that the bill did not interfere with the theological degrees or teaching of the Universities. The bill was confined to the Universities properly so-called, and did not interfere with the colleges, and the government of the Universities still remained with convocation, which consisted wholly of members of the Church of England.' Clearly the bill would not satisfy the definition of the author of 'Fifty Years of the House of Lords.'[5] What a travesty he gives of the eloquent Bishop of Peterborough's speech![6]

'The Bishop of Peterborough reminded the Peers of the duties they owed "to God and the Church," and the bill was flung out by a majority of 74 to 46.' This sounds like the speech of some fiery Peter the Hermit; but here is what the

[1] Hansard's *Parl. Debates*, third series, vol. clxxxiv. 341.
[2] *Ibid.* vol. clxxxii. 659.
[3] The *Fortnightly Review* for February 1873 (*Forty Years of the House of Lords*), p. 239 (erroneously paged '339').
[4] Hansard's *Parl. Debates*, third series, vol. clxxxix. 46.
[5] P. 41. [6] P. 42.

bishop said[1]:—'Many of the flaws pointed out during the debate could be, and he believed if the bill were rejected would be, dealt with by the Universities themselves; and he, for one, would recommend them to take the matter into their serious consideration, and make such changes, as might be thought desirable, spontaneously, and with all the liberality that was consistent with their duty to God and the Church.' The speech, so far from being that of some firebrand, was a conciliatory one. 'Were the Universities,' he asked, 'supported by the State? They were not. Parliament had not founded them, nor had it given them their wealth.'[2] For this reason he urged the Peers to respect their independence; and he urged the Universities to grant 'spontaneously' what was being sought to be forced upon them.

The author of 'Fifty Years of the House of Lords' does not allude to the year 1868, which is memorable as the one in which the principle of the abolition of University tests was extended for the first time to the colleges, with this qualification, that it should be left optional to the college authorities whether they would avail themselves of the provisions of the bill or not. The bill, which was carried in the Lower House by a reduced majority,[3] never got beyond the second reading.[4]

In the course of a debate on a petition to the Upper House, the late Duke of Devonshire, the Chancellor of Cambridge University, stated[5] that there was a majority of about 2 to 1 against the bill of Sir John Coleridge in the senate of that University,[6] and he believed that these numbers very faithfully represented the relative strength of the two sides in the University.

'In 1869 the bill was sent up again, only to be rejected by a majority of 2 to 1.'[7]

[1] Hansard's *Parl. Debates*, third series, vol. clxxxix. 60, 61.
[2] *Ibid.* 59, 60, 61.
[3] 198 to 140; *ibid.* vol. cxciii. 471.
[4] The bill was withdrawn on July 22. *Ibid.* 1614.
[5] *Ibid.* vol. cxcii. 1020.
[6] Supposed to be the most liberal of the two ancient seats of learning.
[7] P. 42 of *Fifty Years of the House of Lords.* Mr. Spalding falls into the same error. 'Rejected by Lords,' app. pp. 262, 263, 267.

This is inaccurate. What actually took place is stated accurately by Mr. Bowen-Graves[1]:—'The previous question was carried by about 2 to 1 in the Upper House.'

The late Earl of Carnarvon, who moved 'the previous question,' explained why he did so:—'Whatever discussion there has been in the House of Commons,[2] the question of tests with regard to the colleges comes before us for the first time. Is it fair, I ask, that so large a proposal should, for the first time, be submitted to your lordships at this period of the session, encumbered as we are with other important questions? This bill confuses the difference between the Universities and the colleges. Its very title is misleading, for it is called "The University Tests Bill," whereas it touches the colleges rather than the Universities. I move the previous question, desiring to indicate the groundwork on which negotiations might, I think, be fairly entered upon, and to secure time, if possible, for the consideration of the question by the Universities and the country.'

Lord Carnarvon then sketched out the leading features of a compromise.[3]

The Bishop of Gloucester and Bristol vindicated the course taken by Lord Carnarvon, who had acted 'most rightly and consistently' in moving the previous question.[4]

The question 'that the question be now put,' was negatived, but the majority was not 2 to 1, only 37 in a House of 145 peers.[5]

'In 1870 their Lordships shelved the matter for another year, by referring the question to a select committee.'[6]

In this bill the permissive principle, with regard to the colleges, was abandoned, and the same compulsory principle was applied to the colleges as to the Universities.[7] This bill was, therefore, a bill *primæ impressionis* for the House of Lords.

[1] The *Fortnightly Review* for February 1873 (*Forty Years of the House of Lords*), p. 239 (erroneously paged '339').
[2] I.e. in 1868 and 1869.
[3] Hansard's *Parl. Debates*, third series, vol. cxcviii. 127–133.
[4] *Ibid.* 136. [5] *Ibid.* 143. 'Contents' 54, 'Not Contents' 91.
[6] *Fifty Years of the House of Lords*, p. 42.
[7] So stated by Earl De Grey and Ripon in moving the second reading. Hansard's *Parl. Debates*, third series, vol. cciii. 200.

'I am not one of those,' said the Lord President of the Council,[1] 'who desire to see what is called exclusively secular education, or a colourless religious teaching introduced into the Universities. By this bill your lordships will find that a renewed parliamentary sanction is given to the religious character of the instruction to be imparted at the Universities.'[2]

The Marquess of Salisbury said[3]:—'My noble friend tells us that the bill secures religious worship and instruction. I do not differ from the preamble;[4] but it certainly does not appear to me to be an extravagant thing to ask, that, when we are called upon to pass a measure professing to be in conformity with the preamble, we should take means to inquire whether that conformity is real or not.'

Lord Salisbury carried his resolutions—the first 'transcribed,' as he himself said,[5] from the preamble of the bill, affirming the necessity of 'providing proper safeguards for the maintenance of religious instruction and worship in the said Universities, colleges, and halls'; and the second appointing a select committee 'for the purpose of inquiring into the best mode of giving effect to the foregoing resolution.'[6]

The select committee met and took important evidence in 1870 and 1871. Mr. Gathorne Hardy[7] said, in 1871[8]:—'I think the country is greatly indebted to the House of Lords for the inquiry which they have instituted.'

The Universities Tests Act, 1871
34 *Vict. cap.* 26

'In 1871 the long fight came to a close by the complete surrender by the Lords of every position which they had previously undertaken to defend.'[9]

[1] Earl De Grey and Ripon.
[2] Hansard's *Parl. Debates*, third series, vol. cciii. 200. [3] *Ibid.* 211.
[4] 'Whereas it is expedient that such restrictions, tests, and disabilities should be removed, under proper safeguards for the maintenance of religious instruction and worship in the said Universities, colleges, and halls.' [5] *Ibid.* 201. [6] *Ibid.* 226, 232.
[7] Now Earl of Cranbrook.
[8] Hansard's *Parl. Debates*, third series, vol. ccvi. 1194.
[9] P. 42 of *Fifty Years of the House of Lords*. 'In 1871 they entirely collapsed.' *The House of Lords*, by Harold Spender, p. 28.

This is quite contrary to fact, as anyone will see who peruses the enactment, and especially the following sections: section 4 ('Act not to interfere with lawfully established system of religious instruction, worship, and discipline'); section 5 ('Religious instruction'); section 6 ('Morning and Evening Prayer to be used as heretofore').

'Nothing in this act shall interfere with, or affect, any further or otherwise than is hereby expressly enacted,[1] the system of religious instruction, worship, and discipline, which now is, or which may hereafter be lawfully established in the said Universities respectively, or in the colleges thereof, or any of them, or the statutes and ordinances of the said Universities and colleges respectively, relating to such instruction, worship, and discipline.' 'The governing body of every college [subsisting at the time of the passing of this act in any of the said Universities] shall provide sufficient religious instruction for all members thereof in *statu pupillari* belonging to the Established Church.'[2]

'The Morning and Evening Prayer, according to the Order of the Book of Common Prayer, shall continue to be used daily, as heretofore, in the chapel of every college [subsisting at the time of the passing of this act in any of the said Universities].'[3]

Professorships in Divinity were excepted from the provisions of the act (section 2, Interpretation of terms) on the initiation of the Lords.[4] Degrees in Divinity were excepted

[1] This refers to the 'Conscience Clauses,' sections 3 and 7.

[2] This clause was inserted in the bill on the motion of the Marquess of Salisbury in committee in the House of Lords. Hansard's *Parl. Debates*, third series, vol. ccvi. 394, 395, the words in brackets being added in the House of Commons on the motion of Mr. Gladstone. *Ibid.* 1201, 1202. Thus amended, the clause was accepted by the House of Commons on the motion of Mr. Gladstone. *Ibid.* 1205, 1206. 'Ayes' 197, 'Noes' 165, majority, 32. Mr. Monk called it the imposition of a 'new test.' *Ibid.* 1206.

[3] This clause was moved three times over by Lord Salisbury. *Ibid.* 393, 604, 714, and was agreed to unanimously by the Lords, the words in brackets, however, being added at the end, on the motion of Mr. Gladstone. *Ibid.* 1206, 1207. The House of Commons accepted the clause on the motion of Mr. Gladstone. 'Ayes' 229, 'Noes' 99; majority 130. *Ibid.* 1207–1209.

[4] *Ibid.* 338.

from the provisions of the act.[1] The schools of Divinity, indeed, in the ancient Universities were preserved intact.

The following important provisoes were annexed to the principal section :—

(1.) 'Nothing in this section shall render a layman, or a person not a member of the Church of England, eligible to any office, or capable of exercising any right or privilege in any of the said Universities or colleges, which office, right or privilege, under the authority of any act of parliament, or any statute or ordinance of such University or college, in force at the time of the passing of this act, is restricted to persons in holy orders; or shall remove any obligation to enter into holy orders, which is by such authority attached to such office.'

(2.) 'Nothing in this section shall open any office (not being an office mentioned in this section) to any person who is not a member of the Church of England, where such office is, at the passing of this act, confined to members of the said Church, by reason of any such degree, as aforesaid, being a qualification for holding that office.'[2]

It will be found that everyone of the points emphasised by the primate, in 1834,[3] as essential to the maintenance of the close connection between the ancient Universities of Oxford and Cambridge and the National Church, has been carefully 'safeguarded' by the express provisions of the 'Universities Tests Act, 1871.'

To the House of Lords belongs the peculiar glory of having saved these great institutions from secularisation, while admitting the whole nation to a participation in their privileges and emoluments.

The Abolition of Church Rates defeated in the Commons

We have seen[4] that there was the enormous majority of 431 in the House of Commons against the unconditional

[1] Section 3. [2] Compare 19 & 20 Vict. cap. 88, section 45.
[3] See Chapter xix. *supra*. [4] *Ibid.*

abolition of church rates, in the last year of King William IV.

On March 14, 1849, Mr. Trelawny moved 'that it is the opinion of this House that effectual measures should be immediately taken for the abolition of church rates.' The motion was defeated. 'Ayes' 84, 'Noes' 119.[1] The names of Lord John Russell, Mr. Gladstone, Sir George Grey, Sir Charles Wood, the Right Hon. H. Labouchere, will be found in the list of the majority.

Lord John Russell said [2] that 'the Church was established in this country, not for the benefit solely of those who belonged to it, but as a great tribute and national homage to religion. He knew no argument for the abolition of church rates which would not be equally good for the abolition of tithes. Therefore it was dangerous to assent to a proposal of this kind.'

In 1854 Sir William Clay introduced a Church Rates Abolition Bill. On the second reading it was rejected by the House of Commons.[3] Lord John Russell, who was then a cabinet minister, both spoke [4] and voted [5] against it. Lord John Russell said:—'I say that this unqualified and unconditional repeal of the present law is a proposal intended to forward the schemes of those who are the enemies of an Establishment.'

Lord John Russell based his opposition to the bill on the broadest constitutional principles:—

'In this country,' he said, 'we have a National Church, we have an Hereditary Aristocracy, we have an Hereditary Monarchy, and *all these things stand together.* My opinion is, too, that they would decay and fall together. I see no reason why we should prefer to these institutions those of the United States of America, and I must, therefore, oppose this bill, as, in my opinion, tending to subvert one of the great institutions of the state.'[6]

[1] Hansard's *Parl. Debates*, third series, vol. ciii. 683.
[2] *Ibid.* 674, 675.
[3] 'Ayes' 182, 'Noes' 209; majority against the bill, 27. Hansard's *Parl. Debates*, third series, vol. cxxxiv. 475.
[4] *Ibid.* 469. [5] *Ibid.* 477. [6] *Ibid.* 474, 475.

Is it surprising that the Lords should share these views of the greatest modern advocate of civil and religious freedom?

But Mr. Gladstone was then chancellor of the exchequer, and he, too, both spoke and voted against the bill.[1]

In 1858, Mr. Gladstone's opinions were still unchanged on this subject. He both spoke and voted against Sir John Trelawny's 'Church Rates Abolition Bill.'[2]

Mr. Gladstone will be found obstructing the third reading of the bill on June 1.[3] On June 8, when the division took place, he voted against the third reading.[4]

In the debate which preceded the division, Mr. Gladstone pronounced an elaborate oration in defence of church rates:—

'Is the law of church rates bad? I contend that it is founded upon a popular basis, because it intrusts to a majority of the parishioners the business of satisfying their local wants. Is it a novel principle? On the contrary, it is founded on an ancient law, and it establishes a local supervision in a manner most agreeable to English feelings. In the rural parishes the law works well, and is generous and just, because it imposes an hereditary and traditional burden upon the owners of property, while the benefits are reaped by the poorer classes.

'If you assert that the majority have no right under any circumstances, to obtain support for any particular kind of religion, there is no principle remaining upon which the present payment of tithes can possibly be maintained. The disposition is entertained, and, perhaps, more extensively than it is avowed, to fight the question of a Church Establishment upon the ground of church rates. It is useless to disguise that the bill will throw in many cases a heavy burden upon the clergyman. Its direct effect will be to destroy the maintenance of the Church in certain cases, and, in others, to take their daily bread out of the mouths of the incumbents.'[5]

In the course of the debate in the Lords, Earl Grey said:—

[1] Hansard's *Parl. Debates*, third series, vol. cxxxiv. 448, 477.
[2] *Ibid.* vol. cxlviii. 1553, 1580, 1584.
[3] *Ibid.* vol. cl. 1402.
[4] *Ibid.* 1730.
[5] *Ibid.* 1723–1727.

'We have heard it stated that this bill is an injustice towards the Church of England. That is not a proper way of describing it. I should describe it as a measure of injustice, a measure of robbery, against the labouring poor of the land. The labouring poor of this country are entitled to have their churches maintained by the land of the country, and yet that legal obligation is now proposed to be swept away without any compensation or substitute being provided. What is this but undisguised spoliation of the poor by the rich? The poor do not pay these rates, but they profit by the result, and their highest interests are concerned in the maintenance of the churches of the land.'[1]

In 1859 Mr. Gladstone was still loyal to the Church. His name will be found amongst the 'Noes' in the division on the second reading of the abortive bill of that year, which never reached the Lords.[2]

The author of 'Fifty Years of the House of Lords' carefully avoids mentioning the year 1861. The majority of 9 in 1860 then sunk to zero, but he is much too clever to mention this. Mr. Bowen-Graves is more open-minded,[3] and records the fact. The figures were, 'Ayes' 274, 'Noes' 274. On the third reading of the bill Mr. Speaker said:—

'We have now reached the third reading of this bill, and I find that the House hesitates, and is unable to express a decision, whether the law shall stand or shall be changed. I think I shall best discharge my duty by giving my voice with the "Noes."' Bill put off for three months.[4] So it never reached the Lords.

'On Wednesday, May 14, there was another remarkable debate and division on the church-rate question, which was decided last year by the Speaker's casting vote. This circumstance gave an extraordinary interest to the question when

[1] Hansard's *Parl. Debates*, third series, vol. cli. 846.

[2] *Ibid.* vol. cliv. 1185.

[3] The *Fortnightly Review* for February 1873 (*Forty Years of the House of Lords*), pp. 239 [339], 240.

[4] Hansard's *Parl. Debates*, third series, vol. clxiii. 1322. Mr. Gladstone voted against the bill. *Ibid.* vol. clxi. 1055.

again brought forward, and caused an attendance which, for a Wednesday afternoon debate, was unusually large.

'Mr. Sotheron Estcourt moved a hostile amendment, and when, amid the intense expectation of the House, the numbers were given out, it was found that 287 had supported Mr. Estcourt's amendment, while 286 had voted against it, so that the amendment was carried by a majority of one! The amendment had now to be put as a substantive motion, and a division being demanded by the defeated party, it was carried by [a majority of 17]—288 to 271. The cheers of the victors were echoed by their supporters throughout the country.'[1]

Mr. Gladstone was loyal to the Church in both divisions in 1862. He supported Mr. Sotheron Estcourt throughout.[2] 'Resolved, that it is unjust and inexpedient to abolish the ancient customary right, exercised from time immemorial by the ratepayers of every parish in England, to raise by rate amongst themselves the sums required for the repair of their church, until some other provision shall have been made by parliament for the discharge of those obligations, to which, by custom or statute, the churchwardens, on the part of the parish, are liable.'[3]

'Subsequently Sir J. Trelawny[4] asked,' says Mr. Molesworth,[5] 'whether the Government intended to bring in a measure on the subject, and was told by Lord Palmerston that they had no such intention.'

I am at a loss to conceive what Mr. Bowen-Graves means by hinting[6] that there was 'an alliance,' either in 1861 or 1862, 'between the hereditary chamber and Lord Palmerston,' who 'came to its aid.' Lord Palmerston voted, both in 1861 and 1862, in favour of the abolition of church rates, but he was not anxious to court defeat.

In 1863 'the defenders of church rates gained a more

[1] Molesworth's *History of England*, vol. iii. chap. iii. p. 193.
[2] Hansard's *Parl. Debates*, third series, vol. clxvi. 1730, 1732.
[3] *Ibid.* 1735.
[4] This is a mistake—it was Sir John Pakington. *Ibid.* 2026.
[5] *History of England*, vol. iii. chap. iii. p. 194.
[6] *The Fortnightly Review* for 1873, p. 239 (erroneously paged 339), 240.

unequivocal triumph than they obtained in the two previous years.'[1]

Owing to the illness of Mr. Sotheron Estcourt his place was taken by Mr. Gathorne Hardy,[2] who delivered a powerful speech against the bill. It was rejected on a division. The figures were—'Ayes' 275 (for the second reading), 'Noes' 285, majority 10, against the second reading.[3] Mr. Gladstone voted for the rejection of the bill.[4] He still occupied the position of chancellor of the exchequer.

It is not surprising that for some time after this the Church had 'peace in her borders,' brought about by the firmness of the House of Lords.

Abolition of Compulsory Church Rates

The first premonitory symptom of a change in public opinion on this subject was the usual 'Jump Jim Crow' process on the part of Mr. Gladstone. It took him eight pages of Hansard to explain his apostacy![5] 'I am not able,' he said, 'to vote for a simple abolition of church rates; and if my honourable friend means—which, however, I do not gather from his speech—that this is, and will continue to be, a mere bill for the abolition of church rates, I am not prepared to vote for it *in that sense*.'

But it *was* a bill for the 'simple abolition of church rates,' and Mr. Gladstone must have voted for it in a non-natural 'sense'! This was in 1866. The bill, however, was withdrawn, and did not reach the Lords.

'In 1867,' says the author of 'Fifty Years of the House of Lords,'[6] 'a new Church Rates Abolition Bill was read a second time by a majority of 76. On August 8 the Lords threw out the bill by a majority of 82 to 24.'

'The bill has been sent up to your Lordships,' said the Duke of Marlborough,[7] 'a bare and simple proposition for

[1] Molesworth's *History of England*, vol. iii. chap. iv. p. 230.
[2] Now Earl of Cranbrook.
[3] Hansard's *Parl. Debates*, third series vol. clxx. 932, 974.
[4] *Ibid.* 977. [5] *Ibid.* vol. clxxxi. 1660–1668 [6] P. 43.
[7] Hansard's *Parl. Debates*, third series, vol. clxxxix. 1090, 1091.

the abolition of church rates. The bill not only does away with the compulsory power of levying them, but with that ancient machinery which is the special right of the Established Church.'

'In 1869,' says the author of 'Fifty Years of the House of Lords,'[1] 'after the bill had been referred to a select committee, the Lords gave way, and the measure, the success of which they had declared would be fatal to the Church, was placed on the statute book with their consent, but without any of the fatal consequences which they had predicted.'

It was Mr. Gladstone, as we have seen, who had said:—'I am convinced that, by agreeing to the plan of the Government, you will subvert the Established Church.'[2]

It was in 1868, not 1869, that the question was settled, and it shows extraordinary carelessness on the part of the author of 'Fifty Years' to give the wrong date. His mentor, the author of 'Forty Years,' gives the right one—'the next year' to 1867.[3] And the date is important, for the Earl of Derby said:—'It is my earnest desire that this question should be brought to a satisfactory issue in the present session, and should not be left open for any further agitation, or to be any cause of bitterness among the new constituencies.'[4] 'I confess that the large majorities by which the bill has been passed in the other House is a ground—a sufficient ground, but the only one—to justify the Government in not opposing the present motion.'[5]

The lords spiritual recognised the necessity of passing the bill, as will be seen from a perusal of the speeches of the Archbishop of York,[6] the Bishop of London,[7] and the Bishop of Oxford.[8] The last-named prelate said:—'I acquiesce on the ground stated by the noble earl, late at the head of Her Majesty's Government. The question comes with what we

[1] P. 43.

[2] Hansard's *Parl. Debates*, third series, vol. xxxvii. 489–502, cited *supra*, 1837.

[3] *The Fortnightly Review* for February 1893, p. 240.

[4] Hansard's *Parl. Debates*, third series, vol. cxciii. 601 (alluding to the approaching general election under the Reform Act of 1867).

[5] *Ibid.* vol. cxci. 1124. [6] *Ibid.* 1129. [7] *Ibid.* 1118. [8] *Ibid.* 1134.

cannot mistake to be the decision, in another place, of the representatives of the people of this country, that they will not continue the system of church rates.'

The course taken by the House of Lords was clearly taken in deference to what they regarded as the fixed resolve of the House of Commons. There was only one division in the whole course of the progress of the bill through the House of Commons, and that was on the adjournment of the debate, which was negatived by 131 to 28—majority, 103.[1] Rarely, if ever, has such unanimity been shown by the House of Commons. And what was the cause of this?—for there was a cause. While the bill abolished the compulsory collection of church rates, it left intact all the machinery for its collection under the voluntary system, which flourished, as was recognised in many quarters, in a large number of country parishes. The preservation of the whole machinery of church rates, minus compulsion, was regarded by the friends of the Church in both Houses as a great point gained. It satisfied dissenters; it satisfied churchmen. A select committee of the House of Lords had suggested a similar solution eight years before.[2]

The Burials Bill defeated in the Commons

'The statement of my noble friend behind me,[3] that dissenters, under the present law, have not access to our churchyards, has been objected to by some hon. gentlemen. Well, in all its breadth I am not prepared to support that statement.'[4] So spake Mr. Gladstone in 1863.

Every nonconformist had, indeed, an indefeasible common law right to be buried in the churchyard of his parish, subject to the use of 'the beautiful Burial Service of the Church of England,' which 'to a churchman appeared all but inspired';[5] and also subject to his having been baptized. 'The law recognised for this purpose the validity of baptisms

[1] Hansard's *Parl. Debates*, third series, vol. cxci. 207.
[2] *Ibid.* vol. cxci. 1118, 1119 (speech of the Bishop of London).
[3] Lord Henley.
[4] Hansard's *Parl. Debates*, third series, vol. clxx. 152.
[5] Mr. Osborne Morgan's expression in 1870. *Ibid.* vol. cc. 514.

administered by dissenting ministers, by laymen, and even by women.' [1]

The Church clergyman had a real grievance in being compelled to read the Burial Service over a baptized person who had discarded his ministrations in his lifetime. The Baptists, on the other hand, had a real grievance, and a leading member of that denomination came forward in 1861 to ventilate the grievance in the House of Commons. Sir Morton Peto introduced his Burial of Dissenters Bill in that year.[2] On the second reading it was (under the name of 'The Nonconformist Burial Bill') rejected in a full House by the substantial majority of 81—236 to 155.[3] Sir George Cornewall Lewis, Secretary of State for the Home Department, opposed the bill[4] on behalf of the Liberal Government of the day.

In 1862 Sir Morton Peto reintroduced his bill. It was read a second time, by arrangement, and referred to a select committee,[5] and was ultimately withdrawn.[6]

In 1863 Sir Morton Peto reintroduced his bill in the form recommended by the select committee. But even in its amended form the bill was rejected by 221 votes to 96—majority 125 [7]—a much larger majority against the bill than in 1861.

Sir Morton Peto made no further attempt to carry his bill, the increased majority against it, no doubt, acting as a deterrent.

The Burials Bill, 1870

In 1870 Mr. Osborne Morgan,[8] a churchman by birth and education, appeared as the champion of the churchyard grievance.

The Home Secretary, Mr. Bruce,[9] on behalf of the government of Mr. Gladstone, after the second reading of Mr. Osborne

[1] Hansard's *Parl. Debates*, third series, vol. cc. 513.
[2] *Ibid.* vol. clxi. 650–655.
[3] *Ibid.* vol. clxii. 1051.
[4] *Ibid.* 1037–1039.
[5] *Ibid.* vol. clxvi. 1189.
[6] *Ibid.* vol. clxviii. 89.
[7] *Ibid.* vol. clxx. 167.
[8] Now the Right Hon. Sir George Osborne Morgan, Bart., M.P.
[9] Now Lord Aberdare.

Morgan's Burials Bill, moved[1] to refer the bill to a select committee.

'Unfortunately,' said Mr. Osborne Morgan, 'we have a precedent which is not at all favourable to such a course. In 1862 Sir Morton Peto's bill, which was similar in principle to this bill, was referred to a select committee, and it came out of that ordeal so changed that its best friends hardly knew it again; and those who did scarcely cared to recognise its features.'[2]

In vain Mr. Bruce urged him 'to promote the fullest inquiry into the best method of dealing with a matter which closely and deeply touched members of the Church of England.'[3]

'No quarter!' shouted Mr. Osborne Morgan;[4] 'I shall divide against the bill being referred to a select committee!'[5] And he did; and was handsomely beaten by 91 votes.[6]

The select committee having reported,[7] several fierce struggles occurred over the bill in committee,[8] and, in the end, the recommitted bill was withdrawn.[9]

The Burials Bill, 1871 (*Commons*), *and the Burial Grounds Bill*, 1871 (*Lords*).

Mr. Osborne Morgan reintroduced his Burials Bill at the earliest practicable moment next session.[10] On the second reading he said:[11]—'I am bound to confess that the bill came back from the select committee a much better bill than it went in. I have to thank hon. members for the great pains they have taken in investigating the subject.'

The divisions on the measure were much closer than those

[1] Hansard's *Parl. Debates*, third series, vol. cc. 560. [2] *Ibid.* 521.
[3] *Ibid.* 548. [4] *Ibid.* 558. [5] *Ibid.* 559.
[6] 226 to 135; *ibid.* 561. [7] *Ibid.* vol. cci. 460.
[8] *Ibid.* 1558; vol. cciii. 192. [9] *Ibid.* 1194.
[10] The session was opened by the Queen in person on February 9. Mr. Osborne Morgan's bill was read a first time on the 10th. *Ibid.* vol. cciv. 119.
[11] *Ibid.* 1116.

of the previous session. One very useful amendment, moved by Mr. Talbot, was only rejected by a majority of two.[1] It restored a provision in the first bill of Sir Morton Peto. In the select committee of 1870 the provision was only thrown out by the casting vote of the chairman, Mr. Osborne Morgan. Its object was to shield 'God's Acre' from blasphemous addresses by atheists.

Another amendment was only defeated by a majority of four.[2] Ultimately the bill was withdrawn.[3]

In the course of the same session, a bill entitled 'The Burial Grounds Bill' was introduced into the House of Lords by the late Earl Beauchamp, and, after having passed the second reading without a division, was referred to a select committee.[4] Earl Beauchamp explained that it enacted that 'any parishioner, not entitled to burial according to the rites of the Church of England,[5] may be interred in the churchyard of the parish without the Burial Service[6] of the Church, provided notice shall have been given to the officiating minister of the parish.'

Another provision facilitated the acquisition of burial grounds for the burial of persons with rites other than those of the Church of England.[7]

The Marquess of Salisbury approved, generally, of the bill. 'No doubt,' he said, 'the question it deals with is one of serious difficulty. On the one hand, there is the profound objection of the clergy of the Church of England—and, indeed, of the laity too—to services other than those of the Church of England within the churchyard; while, on the other hand, dissenters, in some places,[8] suffer under a practical grievance

[1] Hansard's *Parl. Debates*, third series, vol. ccvi. 1664–1666: 'Provided that any service, if not according to a published ritual, shall consist only of prayer, hymns, or extracts from Holy Scripture.

[2] *Ibid.* vol. ccvii. 719–722.

[3] *Ibid.* vol. ccviii. 841.

[4] *Ibid.* vol. ccvii. 291–296.

[5] E.g. Baptists, dying before receiving adult baptism.

[6] In many nonconformist bodies the only burial service is held at the house of the deceased person prior to the procession to the grave.

[7] There were already 600 cemeteries in which nonconformists could be buried with what rites they, or their surviving relatives, pleased.

[8] I.e. when not provided with any other place of burial than the churchyard of the parish.

in not being allowed to bury their dead in the churchyard with their own services.'[1]

The Bishop of Winchester[2] said:—'It is much better that your lordships should endeavour to adjust the question by independent action, meeting the reasonable object both of the dissenters and of those who uphold the rights of the Church of England, than that we should wait for the bill which has been, for a long time, struggling to get through the other House.'

Then followed the oft-quoted admission by this Spiritual Peer of a dissenters' grievance:—

'It is a great hardship to those who dissent from the Church of England, and who object to the services used by the Church over the dead, that they should be in any way compelled, as the condition of a parishioner's right to be buried in the churchyard, to have that service read at the burial.'

The select committee reported, and the bill passed through its remaining stages, and was sent down to the House of Commons, where it passed through the second reading, in appropriate silence, on August 16.[3]

As parliament was prorogued five days later, the bill never reached the committee stage in the Commons.

The Burials Bill, 1872 (*Commons*), *and the Burial Grounds Bill*, 1872 (*Lords*)

Mr. Osborne Morgan reintroduced his Burials Bill at the earliest practicable moment in 1872.[4] He explained the bill to be 'a measure authorising burials in the churchyards of parishes *not provided with public cemeteries*,[5] either with a religious service, or *without a religious service*, other than the service of the Church of England.'

The italicised words show a considerable advance in compromise on former measures.

[1] Hansard's *Parl. Debates*, third series, vol. ccvii. 292.
[2] Dr. Wilberforce, *ibid.* 293.
[3] *Ibid.* vol. ccviii. 1737.
[4] The session was opened on February 6. Mr. Osborne Morgan's bill was read a first time on the 7th. *Ibid.* vol. ccix. 90.
[5] *Ibid.* 349. Thus this bill contained the very provision which the author of *Fifty Years* (p. 45) censures the Lords for sanctioning in 1880!

On going into committee Mr. Osborne Morgan signified his willingness to accept the amendment of Mr. Talbot, which had been rejected by a majority of 2 only in 1871.[1] A determined resistance to the bill had, however, now sprung up in the House of Commons. Mr. Talbot intimated that 'the Burial Grounds Bill had been reintroduced into the House of Lords, and would shortly reach that House; and he moved, as an amendment to the motion for going into committee, that "this House will, upon this day fortnight, resolve itself into the said committee."' This was defeated by 21 votes,[2] and the House went, for a short time, into committee; but, on a subsequent day, Sir Michael Hicks Beach succeeded in carrying, by a majority of 52—130 to 78[3]—a resolution that 'the House will, upon Tuesday, the third day of September next, again resolve itself into the said committee.'

That date was never reached, as parliament was prorogued on August 10!

'The Burial Grounds Bill, 1872' was 'welcomed very heartily' by the Bishop of Winchester;[4] and the Bishop of London said[5] that 'the bill, he believed, would remove almost the only real grievance relating to burial under which nonconformists suffered.'

The Earl of Kimberley, Mr. Gladstone's colonial secretary, said[6] that, 'as far as it went, the bill proceeded in the right direction.'

The bill was again passed by the Lords and sent down to the House of Commons, which read it a second time, without a division, on the motion of Mr. (now Lord) Cross.[7] Mr. Osborne Morgan had withdrawn his notice of opposition to the bill; but he now said that he would 'move amendments in committee.' The bill, however, did not reach the committee stage in the Commons.

[1] Hansard's *Parl. Debates*, third series, vol. ccix. 795.
[2] 73 to 52. *Ibid.* 804.
[3] *Ibid.* vol. ccxii. 220-222.
[4] *Ibid.* vol. ccix. 202.
[5] *Ibid.* 201.
[6] *Ibid.* 764.
[7] *Ibid.* vol. ccxi. 1420.

The Burials Bill, 1873

'Even to the grave,' says the author of 'Fifty Years of the House of Lords,'[1] 'the nonconformist was pursued by the hostility of the peers.'

How much truth there is in this assertion let the candid reader, who has followed the narrative thus far, judge.

'The House of Commons condemned the monopoly of the graveyard in 1873, by 280 votes to 217.'

Mr. Osborne Morgan reintroduced his Burials Bill, at the earliest practicable moment, in 1873.[2] He mentioned that Mr. Talbot's amendment was embodied in it. Mr. Disraeli moved the rejection of the bill. His principal point was that the bill clothed nonconformists with privileges not enjoyed by churchmen.

The bill was read a second time, but it never got into committee. Mr. Pell moved that 'the order for committee be discharged';[3] and, after an adjournment, it was discharged on July 23, and the bill was withdrawn.[4]

The Burials Bill again defeated in the Commons

After the general election of 1874, which put Mr. Disraeli in power, Mr. Osborne Morgan allowed a year to elapse before reintroducing his Burials Bill.

In 1875 the second reading of his bill was negatived by a majority of 248 to 234.[5]

The most interesting feature of the debate was a speech of Mr. Gladstone's,[6] in which, so far from asserting that 'the nonconformist was pursued, even to the grave, by the hostility of the Peers,' he said just the reverse:—

'It was admitted by the House of Lords, in the shape of a bill which they sent to the House of Commons the year before last, that it is a distinct and decided grievance to a

[1] P. 45.

[2] The session was opened on February 6. Mr. Osborne Morgan's bill was read a first time on February 7. Hansard's *Parl. Debates*, third series, vol. ccxiv. 151.

[3] *Ibid.* vol. ccxvii. 124.

[4] *Ibid.* 802.

[5] *Ibid.* vol. ccxxiii. 1418.

[6] *Ibid.* 1377.

clergyman and the parties, notwithstanding their concurrent indisposition, that they should be under a legal obligation to have the services of the Church of England performed over the remains of the dead who were not members of that Church.'

Burials Resolution defeated in the Commons in 1876

In 1876 Mr. Osborne Morgan vainly essayed to commit the House of Commons to the principle of the Burials Bill by means of a resolution, moved by way of amendment to the motion 'that Mr. Speaker do now leave the chair':—'The parish churchyards of England and Wales having been, by the common law of England, appropriated to the use of the entire body of parishioners, it is just and right, while making proper provision for the maintenance of order and decency, to permit interments in such churchyards, either without any burial services, or with burial services other than those of the Church of England, and performed by persons other than the ministers of the Church.'[1]

Mr. (now Lord) Cross pointed out[2] that 'it is almost unheard of, after a subject has been debated, year after year, in the House of Commons, not by way of resolution, but by way of an actual bill, that the bill should be thrown over and a resolution resorted to.'

The resolution was rejected, on a division, by a majority of 31—279 votes to 248.[3]

Burials Resolution defeated in the Lords in 1876

'As late as 1876, 148 noble lords voted down the 92 who demanded that the monopoly of the graveyard should cease.'[4]

If the writer of the 'small work' will scan the division lists[5] he will look in vain amongst the '148' for the names of the two primates, the Archbishops of Canterbury and York, both of whom admitted that the dissenters had a grievance

[1] Hansard's *Parl. Debates*, third series, vol. ccxxvii. 1296.
[2] *Ibid.* 1321.
[3] *Ibid.* 1395.
[4] *Fifty Years of the House of Lords*, p. 45.
[5] Hansard's *Parl. Debates*, third series, vol. ccxxix. 664-666.

in relation to burials, which could not, however, be remedied by 'abstract resolutions,' like Lord Granville's (which was similar in its terms to Mr. Osborne Morgan's in the Commons), but which could be remedied, and ought to be remedied, by legislation; and they both called upon Her Majesty's Government themselves to initiate that legislation next session.[1]

Burial Acts Consolidation Bill, 1877 (*Lords*)
Lord Harrowby's Amendment carried on the Report

'In 1877 the Lords gave way.'[2]

'They surprised every one by voting in favour of destroying the monopoly of the graveyard, of which they had, previously, been the stoutest champions.[3]

In 1877, the Lord President of the Council, the Duke of Richmond, introduced a bill, entitled the 'Burial Acts Consolidation Bill,' a clause in which provided that, where 'notice in writing' was given to the incumbent that 'the religious service, or ceremony (if any) will be performed elsewhere,' 'the burial shall be permitted to take place in the churchyard without the performance of any religious service or of any other ceremony.'[4]

Earl Granville made a great mistake in 1877 in pitting his resolution against the second reading of the 'Burial Acts Consolidation Bill' of Mr. Disraeli's administration. The Duke of Richmond, who had charge of the bill, was greatly distressed by it, and, more than once,[5] remonstrated with Earl Granville for the course he was taking. Earl Granville, however, persevered and was beaten by a majority of 39.[6] If he had succeeded, the bill would have been negatived. The inexpediency of the course which he took was soon demonstrated. When a more elaborate amendment, working out the same principle in detail, was proposed in committee on the bill by a staunch Conservative, the Earl of

[1] See their speeches, *ibid.* 616–626, 626–629.
[2] *Fifty Years of the House of Lords*, p. 45. [3] *Ibid.* p. 39.
[4] Hansard's *Parl. Debates*, third series, vol. ccxxxii. 1842.
[5] See *Ibid.* vol. ccxxxiii. 1052, 1053, 1179, 1180.
[6] *Ibid.* 1938; 'Contents' (for the bill) 141, 'Not Contents' 102.

Harrowby, it was only lost—the numbers being equal[1]—by the casting vote of the chairman; and when a similar amendment was proposed by the Earl of Harrowby on the report, it was carried by a majority of 16.[2]

The amendment carried by the Earl of Harrowby in 1877, formed the groundwork of the 'Burials Laws Amendment Act, 1880'—43 & 44 Vict. cap. 41—and I, therefore, append it in a footnote.[3]

It will be seen, on comparing it with the Act of 1880, that even the very phraseology of Lord Harrowby's amendment has been, in many parts of the enactment, adopted by the legislature.

The 'Annual Register'[4] comments favourably on 'the decided action of the House of Lords in assuming so *spontaneously* liberal an attitude.'

[1] Hansard's *Parl. Debates*, third series, vol. ccxxxiv. 1090: 'Contents' 102, 'Not Contents' 102.

[2] *Ibid.* 1931: 'Contents' 127, 'Not Contents' 111.

[3] 'When the relative, or friend, having charge of the funeral of a person dying in any parish, or having had a right of interment in any parish, shall signify in writing to the incumbent of such parish, or to the curate in charge of the same, that it is his desire that the burial of the said person shall take place without the Burial Service of the Church of England, the said relative, or friends, shall thereupon be at liberty to inter the deceased with such Christian and orderly religious services at the grave as he may think fit, or without any religious service (compare sects. 1 to 4 and 6); provided that all regulations as to the position and making of the grave, which would be in force in the case of a person interred with the service of the Church of England, shall be in force as to such interment (compare sect. 5); provided further, that notice of the time, when it is the wish of the relatives or other persons as aforesaid to conduct the said interment, shall be given to the incumbent or curate in charge at latest some time the day before (compare sects. 1 to 4), provided further, that the said interment shall not take place at the time of, or within half an hour before or after any service in the church, or of any funeral already appointed in the churchyard (compare sect. 3). If any person shall, in any churchyard, use any observance or deliver any address not permitted by this act, or otherwise, by any lawful authority, or be guilty of any disorderly conduct, or conduct calculated to provoke a breach of the peace, or shall under colour of any religious observance, or otherwise, in any churchyard, wilfully endeavour to bring into contempt or obloquy the Christian religion, or the belief or worship of any church or denomination of Christians, or the ministers or any minister of such church or denomination, he shall be guilty of a misdemeanour' (compare sect. 7).

[4] For 1877, p. 52 (*History*).

Burials Resolution again defeated in the Commons

In 1878 Mr. Osborne Morgan moved, by way of amendment to the motion that 'Mr. Speaker do now leave the chair,' his Burials Resolution.[1] Referring to the conduct of the House of Lords in the previous session he said :—

'Sir, I will only say of that vote of the House of Lords that I think that, in passing it, their Lordships gave an example of toleration, aye, and of courage, which I think and hope will not be thrown away upon us to-night. I think we may say that we are approaching the subject under circumstances more favourable to its settlement than any that have yet presented themselves. We can appeal to the verdict of the House of Lords. From noble Lords and most Rev. Prelates has come a cry for its settlement, which can no longer be stifled.'[2]

The Marquess of Hartington[3] said :—'It is no longer a question between Nonconformists and Churchmen, or between Liberals and Conservatives—the decision of the House of Lords last year settled that question, if it settled nothing else. It is now a question between the moderate, fair, and calm conservatism which is represented in the House of Lords, and that other kind of conservatism which it is not necessary to describe, but which finds its representation in some parts of this House.'[4]

Mr. Osborne Morgan's resolution was negatived by 242 votes to 227,[5] notwithstanding these arguments.

Thus the principle of the Burials Bill was negatived in the Commons, even after it had been affirmed by the House of Lords! What becomes of the taunt of Mr. Griffiths at the Leeds Convention? 'The Upper Chamber' was 'in advance of the House of Commons.'[6]

[1] Hansard's *Parl. Debates*, third series, vol. ccxxxvii. 1736–1761.
[2] *Ibid.* 1738, 1761.
[3] Now Duke of Devonshire.
[4] Hansard's *Parl. Debates*, third series, vol. ccxxxvii. 1836.
[5] *Ibid.*
[6] *Fifty Years of the House of Lords*, p. 39.

The Burial Laws Amendment Act, 1880
43 & 44 *Vict. cap.* 41

'The letter of your correspondent "Liberal" in to-day's "Times" is opportune enough. But he might have gone further, and reminded your readers that, in the parliament of 1880, the House of Lords opened the churchyards to the nonconformists before ever the Commons did.'[1]

The House of Lords followed up their action in 1877 by initiating legislation on this subject in 1880.

The Queen's speech contained the following announcement:

'A measure will, at an early day, be submitted to you, putting an end to the controversies which have arisen with respect to burials in churchyards and cemeteries.'[2]

The Lord Chancellor[3] introduced the 'Burial Laws Amendment Bill,' thus recommended in the speech from the throne, into the House of Lords, in the new parliament, on May 27, in a long and eminently conciliatory speech[4]:—

'The bill,' he said,[5] 'follows, upon the main point, as to the remedy which it proposes to apply to the admitted grievance of our nonconformist brethren, and by which it seeks to settle this painful and long-pending question, the principles, and, with only formal changes, the terms of the amendment carried in this House on Lord Harrowby's motion in 1877.'

The two primates supported with both voice and vote the second reading,[6] and a majority of the bishops present followed them into the division lobby.[7] The bill was carried on the second reading by 126 votes to 101.[8]

'The Annual Register' for 1880,[9] after describing its main provisions, says:—'The bill proposed a measure of relief to the clergy, relieving them from the obligation to read the

[1] Letter from Mr. C. B. Stuart-Wortley, M.P., in the *Times* of Monday, June 25, 1894.
[2] Hansard's *Parl. Debates*, third series, vol. cciii. 67, 68.
[3] Lord Hatherley.
[4] Hansard's *Parl. Debates*, third series, vol. cclii. 491–513.
[5] *Ibid.* 500.
[6] See *Ibid.* 1020, 1056, 1068.
[7] *Ibid.* 1068, 1069.
[8] Majority, 25; *ibid.* 1068.
[9] Pp. 95, 96.

Burial Service over any sectary for whom it might be demanded.'[1]

'In 1880, when the Burials Bill came before them, the Peers showed all their old anxiety to minimise a concession which could no longer be withheld.'[2]

If any one will take the trouble to examine the division lists in the Lords, he will see that, almost invariably, the Archbishop of Canterbury, and a moiety of the bishops present, voted one way, and the Archbishop of York, and the remaining moiety of the bishops, voted the other way!

The author of 'Fifty Years of the House of Lords'[3] mentions, specifically, two Lords' amendments which he considers objectionable.

'They restricted the operation of the bill to parishes where no cemeteries exist.'[4]

The Archbishop of Canterbury and six bishops voted against this amendment.[5]

'They excluded from its provisions the consecrated section of cemeteries.'

The Archbishop of Canterbury and seven bishops voted against this amendment.[6]

The bill was sent down to the House of Commons at a late period of the session; but, after passing the second reading by a large majority,[7] it was carried through the committee stage at a single sitting.[8]

When it came back to the Lords, the Commons' amendments were agreed to by the Peers, on the motion of the Lord Chancellor.[9]

Through the action of the House of Lords our 'national graveyards' were saved from secularisation. The author of 'Fifty Years of the House of Lords' is quite in error in saying[10] that the Lords 'surrendered the national graveyards to the nation.' Nothing of the sort. 'Secularists,' as the Duke of

[1] Section 13.
[2] *Fifty Years of the House of Lords*, p. 39. [3] P. 45.
[4] This provision appeared in Mr. Osborne Morgan's Burials Bill in 1872!
[5] Hansard's *Parl. Debates*, third series, vol. ccliii. 9, 10.
[6] *Ibid.* 12, 13. [7] *Ibid.* vol. cclv. 1068.
[8] *Ibid.* vol. cclvi. 478–596. [9] *Ibid.* 1160–1172. [10] P. 45.

Richmond, and Lord Stanley of Alderley, pointed out,[1] are as much part of 'the nation' as Christians. But the 'National graveyards' were not 'surrendered' to the secularists. If secularists availed themselves of the change of the law, it could only be by having a 'silent burial.'[2] As the Earl of Selborne explained: 'There is no reason why we should not do what is sufficient to meet the case of Christian nonconformists, a large and important body of our fellow-countrymen, without, on that account, giving up the Christian character of our churchyards.'[3]

'God's Acre' is still the parson's freehold. The clergy are still the custodians of the 'national graveyards,' and this the late Archbishop Tait declared to be the point on which they feel most keenly.[4] A great concession has been made to the Church clergyman. If he has conscientious objections, he need not read the Burial Service over a deceased parishioner who has discarded his ministrations in his lifetime. He may use, instead, selections from Holy Scripture, and prayers from the Liturgy, sanctioned, as a substitute, by the ordinary.[5]

Foreign Policy, 1857

In 1857 the Lords backed up Lord Palmerston in his foreign policy, which was 'to support the British flag.' A motion to censure him was brought forward in the House of Lords and defeated.

Mr. Gladstone said: 'Never mind the House of Lords,' and he and his allies brought forward a vote of censure in the House of Commons, and got a majority. Lord Palmerston obtained permission from the Queen to dissolve Parliament, and the people supported him. He came back, with a large majority. Bright and Cobden both lost their seats.[6]

[1] Hansard's *Parl. Debates*, third series, vol. ccxxxiv. 1087.
[2] *Ibid.* 1089. [3] *Ibid.* 1090.
[4] *Ibid.* vol. ccxxix. 617, 618.
[5] 43 & 44 Vict. cap. 41, section 13.
[6] See the speech of the Duke of Argyll at Glasgow, on November 1, 1894; *Times*, November 2, 1894.

The Irish Parliamentary Franchise

'1837, Reform of Parliament (Ireland) Bill rejected.'[1]

In her first message to both Houses of Parliament read, two days after the death of King William IV., to the House of Lords by the Lord Chancellor, and to the House of Commons by the Speaker, Her Majesty announced that the present state of public business and the period of the session, when considered in connection with the law that imposed upon her the duty of summoning a new parliament within a limited time, rendered it inexpedient that any new measure should be recommended for adoption.

A Mr. Callaghan, M.P. for Cork, nevertheless, with the connivance of the Government, introduced, subsequently, a bill intituled the 'Reform of Parliament (Ireland) Bill,' and it was silently read a second time.[2] When Mr. Callaghan moved the committal of the bill, on July 1,[3] a protest was raised against it, as 'a violation of the message from Her Majesty to the House,' and the committee was, in consequence, 'postponed.'[4] The bill, nevertheless, was slipped through in silence,[5] and was sent up to the Lords. The same objection, of course, was raised to it there.[6] Lord Redesdale denounced it as a 'disgraceful job.'[7] 'It tampered with the rights of voters on the very eve of a general election.' While professing to be a bill for providing additional polling places in Ireland, 'its real object was to disfranchise a number of voters in Dublin and Cork.' Mr. Callaghan was personally interested in the disfranchisement of the Cork voters.

No wonder such a bill was thrown out by the Lords by a majority of 2 to 1.[8]

It is a good illustration of the way in which mischievous proposals are tacked on to useful ones by Radicals.

'Only five per cent. of the adult males of Ireland, in 1839,

[1] *The House of Lords; a Retrospect and a Forecast*, appendix, pp. 260, 265; *Fifty Years of the House of Lords*, p. 18.
[2] Hansard's *Parl. Debates*, third series, vol. xxxviii. 1700.
[3] *Ibid.* 1743, 1745. [4] *Ibid.* 1746. [5] *Ibid.* 1799.
[6] *Ibid.* 1849. [7] *Ibid.* [8] 74 to 36. *Ibid.* 1853.

possessed the franchise. In England the percentage of voters was nineteen,'[1]

This statement (so far as I have been able to test it) does not seem to rest on any more stable foundation than a casual observation of Daniel O'Connell during the debate on the introduction of Lord Stanley's 'Registration of Voters (Ireland) Bill,'[2] in 1841.

'In 1841 and again in 1848,' says the author of 'Fifty Years of the House of Lords,'[3] 'English ministers admitted the scandal of the excessive limitation of the Irish electorate, but nothing was done. The bills were dropped. With the fate of the Corporations Bills fresh before them,[4] ministers naturally did not care to push forward measures certain to be rejected in another place.'

In 1841 the 'English ministers' did all they could to 'push forward' the new Reform Bill for Ireland, which they had 'tacked' to their Registration Bill, or rather to Lord Stanley's Registration Bill,[5] an excellent measure, which they succeeded thereby in defeating. That they were themselves unsuccessful was due to their vacillating conduct, and their foolish proposals, which left them in a minority, over and over again, in the House of Commons.[6] Mr Gladstone voted steadily against them. After their final defeat on clause 1, Lord John Russell rose and said[7]:—'We have always stated that the clause which has now been negatived by the House was the principal clause of the bill, and the foundation on which the superstructure of the bill is built.

[1] *Fifty Years of the House of Lords*, p. 17.

[2] Hansard's *Parl. Debates*, third series, vol. lvi. 235. By an odd Irish bull the writer of the 'small work' represents O'Connell as bemoaning in 1839 the rejection by the Lords of the franchise bills of 1841 and 1848!

[3] P. 17.

[4] The Irish Municipal Corporations Bill, as we have seen, became law in the previous year!

[5] Lord Stanley reproached the Government with 'tacking' a franchise bill to a Registration Bill, as they had 'tacked' the appropriation clause to the Tithes Bill. Hansard's *Parl. Debates*, third series, vol. lvi. 784, 785.

[6] Clause 1: On Lord Howick's amendment—for the Government, 270, against it, 291; on the question that 'the clause stand part of the bill'—for the Government, 289, against it, 300. Hansard's *Parl. Debates*, third series, vol. lvii. 1131, 1274.

[7] *Ibid.* 1279–1284.

Sir, I beg leave to move that you do now leave the chair.' 'Agreed to.' This put an end to the bill.

The 'certainty of the rejection' of their bill in the House of Lords had nothing under the sun to do with the 'dropping' of the bill; and it is a monstrous thing for the writer of the 'small work' to say it had. There was no 'certainty' of anything of the kind. They slaughtered their own measure, in consequence of repeated defeats in the Commons.

'It can hardly be doubted,' says the 'Annual Register' for 1841,[1] 'that the result of the debates was a heavy moral loss to the Government.'

In 1841 the 'English Ministers' carried their new Reform Bill for Ireland, by a triumphant majority of five, through the second reading in the House of Commons;[2] but the new Reform Bill for Ireland, in 1848, seems to have come into the world still-born! Sir William Somerville, Chief Secretary for Ireland, got leave to introduce it;[3] and there the matter ended! Perhaps the fear of the House of Lords was the reason why 'it died before it was born'!

The passage which the author of 'Fifty Years of the House of Lords'[4] cites from Mr. Bright's speech in 1848 had reference to this still-born measure. Lord John Russell, the then Premier, made a statement on July 17, 1848, as to the 'business of the session,' in the course of which he said:—'There is a measure of great importance to which I must allude, and which has not received any discussion, or, hardly any, in the present session. I mean the bill relating to the franchise of counties in Ireland. This is a very important measure, but I do not think that the discussion upon a Bill of so much consequence ought to begin at this time.'[5]

Mr. Bright was very caustic in his observations on this bill, which, he said, 'had been allowed to remain so long a dead letter on the order-book.' He proceeded to dilate on the neces-

[1] Pp. 62, 63 ('History').
[2] Hansard's *Parl. Debates*, third series, vol. lvi. 1126. Mr. Gladstone voted against it. *Ibid.* 1129.
[3] *Ibid.* vol. xcviii. 585–589.
[4] P. 18. Hansard's *Parl. Debates*, third series, vol. c. 517, 518.
[5] *Ibid.* 514.

sity for a new reform bill for Ireland, and gave from somebody else's speech the statistics as to the number of Irish electors —the statistics cited by the author of 'Fifty Years of the House of Lords,' and which are absurdly wrong. The complaints which Mr. Bright made of the defective system of registration in Ireland were, no doubt, based upon accurate data; but then, it did not lie in the mouth of any Liberal to complain of that system, as the Liberal party had distinctly 'cushioned' (to use O'Connell's phrase) Lord Stanley's 'Registration of Voters (Ireland) Bill,' which would have effected a salutary reform of that system, seven years before Mr. Bright spoke!

Parliamentary Voters (Ireland) Act, 1850 (13 *and* 14 *Vict. cap.* 69)

'1850. "Elections (Ireland) Bill." Object: to reduce franchise qualification to 8*l.* Lords raised it to 15*l.* Compromised at 12*l.* ('Hansard, vol. cxii. c. 1142, 1423, 1442.')[1]

As Mr. Spalding's 'Tables' are considered by some weak-kneed pressman to be useful, it may not be amiss to point out that the statement he gives of the 'object' of the 'Elections (Ireland) Bill' is utterly wrong.

If the reader will turn to the first reference—'Hansard, vol. cxii. c. 1142'—he will find that the 'object' of the 'Elections (Ireland) Bill' was, as stated by the Lord President of the Council,[2] 'to give power to erect a certain number of polling booths in different parts of the counties in Ireland, in order to afford facilities for the carrying on of elections, similar to those existing in English counties.'

This useful measure obtained the unanimous approval of the House of Lords,[3] and received the royal assent on August 14, 1850,[4] the very day on which the measure that Mr. Spalding ought to have mentioned—the 'Parliamentary Voters (Ireland) Bill'—received the royal assent![5]

[1] *The House of Lords; a Retrospect and a Forecast*, appendix, p. 261 Compare *Fifty Years of the House of Lords*, pp. 18, 19.

[2] The Marquess of Lansdowne.

[3] See Hansard's *Parl. Debates*, third series, vol. cxii. 1142, 1423, 1442 (the references given by Mr. Spalding). I think Mr. Spalding must have 'devilled' his 'Tables'!

[4] 13 & 14 Vict. cap. 68.

[5] *Ibid.* vol. cxiii. 1067.

Lord John Russell gave[1] a graphic description of the old forty-shilling freehold franchise in 1850:—'It formed the greatest caricature and most savage abuse of the representative system that could well be imagined. I remember hearing a story which is some illustration of that statement. A gentleman who was passing by a number of wretched hovels, in the shape of a village in Ireland, said to the gentleman who was driving him: "How can you permit any person to inhabit these wretched hovels, and of what possible use can the people be to you?" "Oh," answered the latter, "all the use in the world, for they enabled me to make my brother a dean!"'[2]

This franchise, as we have seen,[3] was put an end to in 1829; and in 1832 the Irish Reform Act conferred the franchise on 10*l.* leaseholders.

The number of electors, under the Irish Reform Act, had diminished greatly owing to a variety of causes; but the principal causes were (1) the terrible famine of 1848—'the severest visitation,' said Lord Stanley,[4] 'that ever afflicted any country'; and (2) the defective system of registration, which Lord Stanley was prevented, as we have seen, from amending, by the factious opposition of the Liberals in 1841.

The Bill of 1850 proposed to enfranchise *tenants at will.* 'A tenancy at will,' said Lord Stanley,[5] 'with an 8*l.* rating, was to be the test of the county constituency, so that a man occupying a cabin in a small town, and renting a couple of "Cows' grasses" in the country district immediately adjoining, was to be placed, by no act of his own, on the register. So whilst they abolished the test of property and tenure in Ireland, they would still retain it for England.'[6]

Mr. Spalding's expression 'to reduce the franchise qualification to 8*l.*' is an ambiguous expression—8*l.* what? To reduce the franchise qualification from a 10*l.* *leasehold* to an

[1] Hansard's *Parl. Debates*, third series, vol. cix. 269, 270.

[2] 'There were, in some counties, thousands of manufactured votes.' *Ibid.* 269.

[3] See Chap. XVIII. *supra.*

[4] Hansard's *Parl. Debates*, third series, vol. cxi. 804. [5] *Ibid.* 807.

[6] Under 'the Chandos clause,' of the Reform Act of 1832, tenants-at-will, *paying a rent of not less than* 50*l. a year*, enjoyed the franchise.

8*l.* *rating* franchise. Lord Brougham, who, with Earl Grey, gave Ireland her 10*l.* leasehold franchise, was opposed to the enfranchisement of tenants-at-will with 8*l.* rating, and supported the Earl of Desart's amendment to raise the qualification to 15*l.*,[1] an amendment which was carried by a majority of 22.[2] But the Earl of St. Germans, who had an amendment on the notice paper (which he actually moved before the Earl of Desart moved his, and somewhat foolishly postponed) proposing to substitute a 12*l.* ratal franchise for an 8*l.* ratal franchise, pointed out that the proposal of the Earl of Desart had already been negatived in the House of Commons,[3] and if the House of Lords adhered to it, the bill would be lost.

A spirit of compromise was in the air. Before the division took place in the Lords, the Lord President of the Council announced[4] that 'in execution of that which he felt to be his duty he would vote for the omission of the words implying an 8*l.* qualification.'

In the House of Commons the omission of the figure 8*l.* was agreed to on the motion of Lord John Russell; and, after an ineffectual struggle on behalf of the figure 15*l.*,[5] the figure 12*l.* was inserted instead of 8*l.*, *nem. con.*[6]

In the House of Lords an ineffectual attempt was made to reinsert the figure 15*l.*; the figure 12*l.* was retained.[7]

Lord John Russell,[8] in defending himself against an attack of Mr. Bright, who charged him with undue deference to the Upper House, said he preferred the British Constitution to any other, 'with all its inconveniences, with its very long delays, with frequent rejection of measures that, after some years, everyone admits to be useful, with lengthened discussions, with the many impediments to legislation.' 'The sum of good obtained under our present system,' he observed, 'is so great, our institutions are so valuable, and their fruits so

[1] Hansard's *Parl. Debates*, third series, vol. cxii. 768–772.
[2] 72 to 50; *ibid.* 776.
[3] 'Ayes' (for 8*l.*) 213, 'Noes' (for 15*l.*) 144; majority 96. *Ibid.* vol. cix. 287. Mr. Gladstone voted with the 'Noes.' *Ibid.* 289.
[4] *Ibid.* vol. cxii. 774, 775.
[5] *Ibid.* vol. cxiii. 574.
[6] *Ibid.* 576.
[7] *Ibid.* 861, 863.
[8] See *ibid.* 560, and the *Annual Register* for 1850, p. 103.

precious,' compared with other forms of government, 'that I am not willing to change the Constitution of this country for any other that the hon. member may recommend.' [1]

'As the net result of half a century's struggle for representation, the Irish borough franchise is fixed at 4*l.* rating, instead of household suffrage.' [2]

It really was too bad of Mr. Gladstone to commend a *stale* pamphlet, as the 'small work' has been re-edited and sown broadcast by the *Review of Reviews* with the addition in small type of some more counts to the indictment'; a footnote should have been appended to the new edition of this stale pamphlet, intimating that the Irish boroughs, and, for the matter of that, the Irish counties too, possess 'household suffrage' now.

By the 'Representation of People Act, 1884,' [3] 'every man possessed of a household qualification shall, if the qualifying premises be situate in a county or borough in Ireland, be entitled to be registered as a voter, and, when registered, to vote at an election for such county or borough.'

The action of the Lords with regard to the proposals for the extension of the suffrage in Ireland [4] has been amply justified by the results. Before the extension of the suffrage in Ireland there were only nine Home Rulers in the House of Commons. After the extension there were 86, and now there are 81. The 'mud hovel suffrage,' as it has been called,[5] went down so low that it placed the unlettered and priest-ridden peasants in an unassailable position of authority over all the other voters. It cut away the solid ground from under the Unionists in a great portion of the sister country, so that the nomination day and the election day in these benighted constituencies are one—a contest is utterly hopeless. The whole thing is settled in a committee of priests, with the addition

[1] The passage is important; the promoters of the Leeds Conference rely upon Mr. Bright as the author of their proposals. 'The Dog Tear-e'm' (Mr. Roebuck) was the real author. But it is clear Lord John Russell had no sympathy with their views.

[2] *Fifty Years of the House of Lords*, p. 19.

[3] 48 Vict. cap. 3, sect. 2.

[4] Pp. 15–19 of *Fifty Years of the House of Lords*.

[5] Viscount Morpeth used the phrase.

occasionally of the office-bearers of some 'Gaelic Athletic Club.' And this is called 'the voice of the people'!

It imposed on Mr. Gladstone and led to his conversion. It enabled Irish Nationalists to compel the working-men of England to accept the prohibition of 'contracting out' in the Employers' Liability Bill, but the House of Lords happily rescued the English operatives from this fate.

It enabled the Government to violate the union of Church and State in England, against the wishes of the English representatives, and to place the control of the Poor Law in the hands of those who contribute nothing to the rates.

It is the 'mud hovel suffrage' which keeps the present Government in power; without the solid vote of the Irish Nationalists they would not exist for a single day.

But for the 'mud hovel suffrage,' the Home Rule Bills of Mr. Gladstone and the Evicted Tenants Bill would never have seen the light of day. The new electors mistake greed for patriotism, and are told that they are 'fine fellows' because they 'hold the rents' instead of meeting their just obligations. The Irish Distressed Ladies' Fund is entirely due to them. By 'holding the rents' they have reduced thousands of delicately nurtured ladies to penury and want. Aged ladies have to choose between the workhouse and starvation.

The Parliamentary Electors Bill, 1837

This bill was introduced in violation of the pledge of the Melbourne ministry not to bring forward any measure, upon which any difference of opinion was likely to arise, between the accession of Queen Victoria and the prorogation of parliament, in view of a dissolution and general election in consequence of Her Majesty's accession.

The bill aimed at setting aside the provision of the Reform Bill requiring that the rates should be paid up to the time of voting, and it was brought before the Peers four days prior to the prorogation!

'Your Lordships are now,' said Lord Redesdale,[1] 'on the eve of the dissolution of parliament, called upon to pass a bill

[1] Hansard's *Parl. Debates*, third series, vol. xxxviii. 1894.

which creates a very considerable change in the elective franchise as established by the Reform Bill.'

The then Earl of Harrowby said[1]:—'The ready payment of taxes is considered as a test by which it may be judged whether persons claiming a right to vote do, or do not possess that degree of respectability which persons ought to have who are to be entrusted with the franchise; while this bill would confer the franchise on persons who cannot stand that test, and are not, therefore, fully qualified to enjoy it.'[2]

The Final Register of Electors Bill, 1837

The Earl of Radnor explained[3] that 'the chief object of this bill was to preserve the right of voting to voters who should happen to change their residence between one registration and another.'

Lord Redesdale said,[4] that 'the principle of the bill was to give persons a vote who had no qualification, merely because they had happened to have had one at a former time. He should object to its passing on the eve of a general election.'

This bill was another attempt to depart from the arrangement not to bring forward any controverted matter between the accession of the Queen and the prorogation of parliament. It was another attempt, on the eve of a general election, to alter the Reform Act.

'These bills,' says the author of 'Fifty Years of the House of Lords,'[5] 'were both rejected on the ground that they added to the numbers on the register.'

They were both rejected because they proposed, on the eve of a general election, to tinker up the Reform Act in violation of the pledges of the ministers of the Crown.

Registration of Electors (England) Bill, 1838

'In 1838 the Lords proposed, by adding a new clause to a bill sent up from below, to deprive those of the franchise who

[1] Hansard's *Parl. Debates*, third series, vol. xxxviii. 1895.

[2] This debate might profitably be perused by the present Government, who propose, in their Registration Bill, to do away with the rating qualification altogether!

[3] *Ibid.* 1835, 1836.

[4] *Ibid.* 1836.

[5] P. 36.

exercised it as trustees, but the Commons preferred to lose their bill altogether rather than accept such an amendment.'[1]

By the statute 7 & 8 Will. III. cap. 25, sect. 7, 'No person shall be allowed to have any vote in election of members to serve in parliament for, or by reason of, any trust estate, unless such trustee be in actual possession or receipt of the rents and profits of the same estate; but the *cestui que trust* in possession shall and may vote for the same estate notwithstanding such trust.'

By the Reform Act of 1832 (2 Will. IV. cap. 45, sect. 23) this was re-enacted, word for word, in relation to the elections of knights of the shire; nevertheless, 'doubts' arose 'as to the true intent and meaning of the said 'enactment'[2] on account of some inconsistent provisions of the Reform Act, and an explanatory enactment was passed in 1843—6 Vict. cap. 18, sect. 74—as follows:—

'No trustee of any lands or tenements shall, in any case, have a right to vote in any such election for or by reason of any trust estate therein; but the *cestui que trust* in actual possession, or in the receipt of the rents and profits thereof, *though he may receive the same through the hands of the trustee*, shall and may vote for the same, notwithstanding such trust.'

All that the House of Lords did was to endeavour to clear up the 'doubts' which had arisen as to the meaning of the trustee clauses in the Reform Act of 1832, 'doubts' which led to constant litigation; for, in face of the 'doubts,' an appeal was necessary to get the votes of trustees struck off the register. The Lords had ample Liberal precedents for 'tacking' a franchise clause to a Registration Bill!

The report of the debates on the Registration Bill in Hansard is very meagre, but the 'Annual Register' for 1838[3] gives us the Lords' reasons for insisting on their amendments:—

'(1) Because they are of opinion that it was never intended to give in the Reform Bill a more extended right of voting to trustees than they before enjoyed;' (2) because, unless a

[1] *Fifty Years of the House of Lords*, p. 36.

[2] Recital of sect. 74 of the 6 Vict. cap. 18. *Rogers on Elections*, 16th edit. Part I. chap. i. p. 45.

[3] P. 187 ('History'), note.

man is in receipt of the rents and profits for his own use, he cannot be considered to be possessed of such an interest in the property as may fairly entitle him to vote for it; and (3) because the contrary interpretation has led to a systematic splitting and creation of fictitious votes.'

The author of 'Fifty Years of the House of Lords' blames the Peers for objecting to 'the systematic splitting and creation of fictitious votes'!

The Representation of the People Act, 1867 (30 & 31 *Victoria, cap.* 102)

Mr. Spender[1] calls the Representation of the People Act, 1867, 'the leap in the dark in 1868!' 'Mr. Disraeli duped the Whigs by stealing their bill in 1868.'

This is Mr. Spender's slipshod method of reproducing history!

'In 1867, the second Reform Act was passed,' says the author of 'Fifty Years of the House of Lords,' 'without being first rejected by the Peers.'[2]

The author of 'Fifty Years of the House of Lords' gives two extraordinary reasons for this:—'(1) The fact that a Reform Bill had already fallen through in the House of Commons, and (2) that the second bill was introduced by a Conservative Government.' The real reason was that the bill placed the suffrage on an intelligible basis, which none of the reform bills introduced since 1832 had succeeded in accomplishing. They were simply abortive efforts of the great parties in the State to put it up to a kind of 'Dutch auction,' each ministry naming a lower *rental* suffrage than the preceding one. Clearly there was no finality in any particular amount of rent. But there was (and is) finality about household *ratal* suffrage, based as it is on the great principle that 'those who bear the burdens of the State should enjoy its benefits.'[3]

'Even the handiwork of Lord Derby and Mr. Disraeli,' says the author of 'Fifty Years of the House of Lords,'[4] 'could not escape the reactionary meddling of the Peers. They doubled the copyhold qualification of voters in counties.'

[1] *The House of Lords: Who they are, and what they have done*, p. 22.
[2] P. 36. [3] '*Qui sentit onus sentire debet et commodum.*' [4] P. 37.

Why, the provision contained in clause 5 of the Representation of the People Bill was restored by the Lords after having been struck out by the Commons!

Mr. Colville, in committee on the bill in the Commons, carried,[1] against Lord Derby's Government, an amendment to clause 5, to reduce the copyhold franchise to *5l.* from *10l.* the figure at which it was fixed in the bill.[2]

The Lords restored the handiwork of Lord Derby and Mr. Disraeli, by a majority of 62,[3] on the motion of the late Earl of Harrowby.

The Commons repeated their preference for *5l.*, at the instance of Mr. Colville.[4]

When the Commons' amendments to the Lords' amendments were considered, Lord Derby moved to agree with them all, but he 'criticised severely,' says the 'Annual Register' for 1867,[5] 'the reasons assigned by the Commons,' for disagreeing with the Lords' amendment to clause 5.[6]

Of the other two Lords' amendments, 'voting papers,' and 'three-cornered constituencies,' one was rejected and the other accepted by the Commons, as stated by the author of 'Fifty Years.'[7]

The Ballot defeated in the Commons

I have referred, in the last chapter,[8] to the 'unmixed contempt' (to use Mr. Bowen-Graves' expression[9]) of the House of Commons for the Ballot in the reign of King William IV. The earlier part of Queen Victoria's reign was equally unpropitious for that experiment.[10]

[1] By 44 votes: 'Ayes' 201, 'Noes' 157. Hansard's *Parl. Debates*, third series, vol. clxxxvii. 848.

[2] It had been fixed at that figure by the Reform Act of 1832, which first enfranchised copyholders.

[3] 'Contents' (*5l.*) 56, 'Not Contents' (*10l.*) 118; *ibid.* vol. clxxxix. 324, 325.

[4] *Ibid.* 1123–1125, 'Ayes' (*5l.*) 235, 'Noes' (*10l.*) 188; majority 47.

[5] P. 112 (History).

[6] Hansard's *Parl. Debates*, third series, vol. clxxxix. 1309–1314. The biting sarcasms of 'the Rupert of Debate' will well repay perusal.

[7] P. 37.

[8] See Chap. XIX. *supra*.

[9] The *Fortnightly Review* for February 1873 (*Forty Years of the House of Lords*), p. 233.

[10] 'Sydney Smith strongly condemned the Ballot in one of the ablest, wittiest, and most argumentative of his writings.' Molesworth's *History of England*, vol. iii. chap. vi. p. 410.

'Everyone knew,' says Mr. Walpole,[1] 'that no practical results would ensue from these discussions.'

In 1838, the motion in favour of the Ballot brought forward by Mr. Grote, its champion in the last reign, was defeated by 315 votes to 198.[2] Mr. Gladstone's name will be found among the 'Noes.'[3]

When presenting to the House of Lords a petition in favour of the Ballot in this year, the Liberal prime minister, Viscount Melbourne, said[4]:—

'I do not hesitate to express my belief that the Ballot in no respect would prove an efficacious remedy for the evils and grievances it is intended to cure. I cannot give my approbation to the prayer of the petition.'

In 1839, the motion of Mr. Grote in favour of the Ballot was negatived by a majority precisely similar to that of the previous year, 117.[5] Mr. Gladstone's name will be found amongst the 'Noes.'[6]

When next the question of election by Ballot was brought before the representatives of the people, Mr. Ward stood sponsor for it; but the House was even more 'unmixed' in its 'contempt' than before. Mr. Ward's motion was defeated by a majority of 133.[7] Mr. Gladstone's name appears in the list of its opponents.[8] This was in 1842. The increased majority seems to have staggered the supporters of the Ballot, who for six years refrained from testing the opinion of the House of Commons.

In 1848 a new champion appeared, in the person of the Hon. Henry Berkeley, who, in spite of the opposition of Lord John Russell, the then prime minister, and of the other members of his cabinet in the House of Commons, carried a resolution in favour of the Ballot, in a thin house, by a majority of 5![9] 'That was an accident,' said Mr. Berkeley in 1865,[10] 'and did not truly represent the opinion of the House.'

[1] *History of England*, vol. iv. chap. xvii. p. 48.
[2] Majority 117. Hansard's *Parl. Debates*, third series, vol. xl. 1221.
[3] *Ibid.* 1223.
[4] *Ibid.* vol. xli. 47–49.
[5] *Ibid.* vol. xlviii. 504; 333 to 216.
[6] *Ibid.* 506.
[7] 290 to 157; *ibid.* vol. lxiv. 418.
[8] *Ibid.* 420.
[9] 86 to 81. *Ibid.* vol. c. 1268.
[10] *Ibid.* vol. clxxx. 419.

In 1849, Mr. Berkeley asked leave to give effect to the resolution, carried in the previous year, by bringing in a bill to give the electors 'the protection of the Ballot.'[1] 'I cannot,' he said, 'understand how hon. members can now, consistently with propriety, refuse me permission to bring in this bill, if they desire to uphold the dignity of the peoples' House.'

It was one thing, however, to vote for an abstract resolution, and another thing to follow it up, in a concrete form, by a bill! Leave was refused to bring in the bill by 136 votes to 85,[2] the minority being only 1 less than the majority of the previous session! The Prime Minister, Lord John Russell, and the other cabinet ministers in the House of Commons, voted against the motion.

Leave to bring in the bill was refused in 1850 by a larger majority.[3] The names of the Prime Minister, Lord John Russell, and the other cabinet ministers in the House of Commons appear amongst the 'Noes.' So, too, does the name of Mr. Gladstone.[4]

In 1851 an amusing incident occurred; Mr. Berkeley, in a very thin house, carried his motion for leave to introduce the Ballot Bill by 37 votes![5] We have seen that Mr. Berkeley mustered 86 votes in 1848, and 85 in 1849; he now mustered 87; clearly these figures only represented a compact body of 'stalwarts,' who formed an insignificant minority of the House of Commons; but as the Conservatives and the mass of Lord John Russell's supporters looked upon these annual motions with (to use Mr. Bowen-Graves' expression[6]) 'unmixed contempt' and 'everyone knew that no practical results would ensue from these discussions'[7] only fifty members took the trouble to put in an appearance for the purpose of opposing the introduction of the bill!

[1] Hansard's *Parl. Debates*, third series, vol. cv. 907, 908.
[2] *Ibid.* 926; majority 51.
[3] 55. 'Ayes' 121, 'Noes' 176; *ibid.* vol. cix. 521. [4] *Ibid.* 522.
[5] *Ibid.* vol. cxviii. 374.
[6] The *Fortnightly Review* for February 1873 (*Forty Years of the House of Lords*), p. 233.
[7] Walpole's *History of England*, vol. iv. chap. xvii. p. 48.

'The bill,' says the 'Annual Register' for 1851,[1] 'was brought in, and read a first time, but made no further progress.'

Lord John Russell had his revenge in 1852. He had ceased, no doubt, to be prime minister, but he had the satisfaction of seeing Mr. Berkeley's motion for leave to introduce the Ballot Bill, which he had so consistently opposed when in power, defeated by a majority of 102.[2] Mr. Gladstone voted against it once more.[3]

In 1853, Lord John Russell was still active in his opposition to the Ballot. The franchise, he said, is a public trust, and every man who exercises that public trust exercises it subject to the opinion and judgment of his fellow-citizens. 'But, sir, I hold, besides this, that the enactment of a secret mode of voting would be hostile to the spirit of liberty in this country, the introduction of a spirit directly opposite—a spirit of skulking.'[4]

Mr. Berkeley's motion was negatived by 232 votes to 172.[5] Mr. Gladstone, who was chancellor of the exchequer in the Earl of Aberdeen's Government, voted against it.[6]

In 1854, Mr. Berkeley's annual motion was defeated by 194 votes to 157.[7] Mr. Gladstone, who was still chancellor of the exchequer, voted against it.[8]

In 1855, Viscount Palmerston, who had succeeded the Earl of Aberdeen as prime minister, made a forcible speech against Mr. Berkeley's motion[9]:—'I hold,' he said, 'that the right or privilege of election is a trust confided by law to a certain portion of the community, not for their own benefit, but for the benefit of the community at large, and that every man should have an opportunity of knowing how the trust has been executed. In the United States it is not for the purpose of secrecy that the ballot is adopted; it is for the purpose of convenience. Is it proposed to make it compulsory that voting shall be carried on in secret? If that were the law, it would be degrading to the national character; and I say no Englishman would submit to it.'

[1] P. 149 ('History').
[2] 'Ayes' 144, 'Noes' 246; Hansard's *Parl. Debates*, third series, vol. cxx. 436. [3] *Ibid.* 438. [4] *Ibid.* vol. cxxviii. 226. [5] *Ibid.* 229.
[6] *Ibid.* 230. [7] *Ibid.* vol. cxxxiv. 114. [8] *Ibid.* 115.
[9] *Ibid.* vol. cxxxviii. 944.

Mr. Berkeley's motion was negatived by 218 votes to 166.[1] Mr. Gladstone, who was chancellor of the exchequer in Lord Palmerston's administration, voted against it.[2]

The discussion in 1856 was very brief. Only one other member besides the mover, Mr. Berkeley, took part in it. His motion was defeated by 151 votes to 111.[3] Mr. Gladstone, who was now out of office, voted with the 'Noes.'[4]

In 1857 a long discussion took place, Lord John Russell, who was then out of office, and Sir George Cornewall Lewis, then chancellor of the exchequer in Lord Palmerston's administration, speaking against it. The motion of Mr. Berkeley was lost by 257 votes to 189.[5]

In 1858 Mr. Berkeley's motion was (to use the language of one of his supporters[6]) 'ignominiously rejected' by a majority of 97.[7] Mr. Gladstone, who was still out of office, voted against it.[8]

The debate in 1859 was remarkable for the extremely able way in which two ex-prime ministers, Lord John Russell[9] and Lord Palmerston[10] (neither of them in office), exposed the legal subtleties of the late Lord Westbury, then Sir Richard Bethell. 'I still venture to submit,' said Lord Palmerston,[11] 'that the words "trust" and "trustee" have a larger meaning than that which my hon. and learned friend and the Court of Chancery apply to them, and that a person may hold his vote in trust, as a trustee for the whole nation.'

Mr. Berkeley, in his reply,[12] said 'he had been astonished by the speeches of the two leaders of the Liberal party. The noble lords, so long at variance, now took their stand, side by side, on the ballot box, like the two Kings of Brentford smelling at one rose!' He was rewarded for his witty speech by coming within 3 of carrying his motion in a rather thin house.[13]

[1] Hansard's *Parl. Debates*, third series, vol. cxxxviii. 946.
[2] *Ibid.* 948. [3] *Ibid.* vol. cxlii. 450. [4] *Ibid.* 451.
[5] *Ibid.* vol. cxlvi. 682. [6] *Ibid.* vol. cl. 1745 (Mr. P. W. Martin).
[7] *Ibid.* 1793: 'Ayes' 197, 'Noes' 294. [8] *Ibid.* 1796.
[9] *Ibid.* vol. cliii. 1668. [10] *Ibid.* 1674.
[11] *Ibid.* 1675. [12] *Ibid.* 1683. [13] *Ibid.* 1685: 'Ayes' 99, 'Noes' 102.

After the general election of 1859, Mr. Berkeley excused himself for not giving the new House an opportunity of voting on the question of the ballot.[1]

The 'whirligig of time,' however, brought its 'revenges'; for in 1860 Mr. Berkeley's motion for leave to introduce the Ballot Bill was defeated by the largest majority that had yet been recorded against it, 254 votes to 147, a majority of 107.[2] Mr. Gladstone's name appears amongst the 'Noes.'[3] He was now chancellor of the exchequer in Viscount Palmerston's new administration.

In the House of Lords the Ballot had, at this time, 4 or 5 supporters![4]

In 1861, no one seems to have thought it worth while to reply to Mr. Berkeley's arguments and those of his seconder. His motion was rejected by a still larger majority, 279 to 154; majority 125.[5]

But (so extraordinary are the vicissitudes of questions brought under the notice of the House of Commons,) in 1862 Mr. Berkeley's motion for leave to introduce the Ballot Bill was carried, in a thin house, by 33 votes.[6] His faithful 'stalwarts' mustered their traditional 80 votes, while Lord Palmerston, like Lord John Russell, was left with only 50 supporters! Mr. Augustus Smith immediately obtained leave, by 34 votes,[7] to introduce a bill in favour of votes being taken by ballot at municipal elections. Mr. Berkeley had, very cleverly, caught the Government napping, and gave them, Lord Palmerston said, an 'agreeable surprise.' 'The hon. member for Bristol has given us an example in his own person that silent voting is better than audible argument.' Mr. Berkeley, instead of favouring the House with a dozen columns of Hansard, contented himself with saying half-a-dozen words and then sitting down! The division was of the kind known to members as a 'snapt division.'

[1] Hansard's *Parl. Debates*, third series, vol. cliv. 868.

[2] *Ibid.* vol. clvii. 957. Larger majorities had been recorded against Mr. Grote's and Mr. Ward's abstract resolutions in favour of the Ballot. *Vide supra.*

[3] *Ibid.* 959. [4] *Ibid.* 831. [5] *Ibid.* vol. clxii, 1004

[6] 83 to 50; *ibid.* vol. clxvii. 60. [7] 82 to 48; *ibid.* 61.

The bill was next read a first time, as a matter of course,[1] but got its *quietus* on the second reading. 'I find myself,' said Mr. Berkeley, 'in an unwonted position, inasmuch as this is the first occasion on which it is my duty to ask the House to read the bill a second time.'[2] The majority against the bill on the second reading was 85.[3]

Leave to introduce the Ballot Bill was denied Mr. Berkeley in 1863 by a small majority.[4]

'My hon. friend,' said Lord Palmerston,[5] 'seems to me to forget what is the vital principle, I may say the breath of life, of the British Constitution, namely, public opinion and public responsibility.'

In 1864 leave to introduce the Ballot Bill was refused by a majority of 89.[6] In addition to the mover and seconder, the only speaker was the Prime Minister, Lord Palmerston.[7] 'If the vote,' he said, 'were a purely personal right, would not a voter be entitled to ask on what principle of justice you punish him for exercising it in the manner which he thinks most for his own individual advantage?'

Defeated by so large a majority against the introduction of his bill, Mr. Berkeley, in 1865, betook himself, once more, to a resolution[8]:—'As a general election is impending, and we have no law which can put down the intimidation of voters nor prevent bribery, it is, therefore, expedient that a trial should be given to vote by ballot.'

No one spoke but the mover and the Prime Minister, Lord Palmerston.[9] The last words that Lord Palmerston uttered on the Ballot were spoken in this debate:—'I think that the Ballot would be inconsistent with the principles on which human society is constituted; I think it would be at variance with the principles of the British Constitution, and I think it would be immoral in its effects.'

The motion of Mr. Berkeley was defeated by 118 votes to 74.[10]

[1] Hansard's *Parl. Debates*, third series, vol. clxvii. 193.
[2] *Ibid.* 1297. [3] 'Ayes' 126, 'Noes' 211; *ibid.* 1313.
[4] 'Ayes' 102, 'Noes' 122, majority 20. *Ibid.* vol. clxxi. 1000.
[5] *Ibid.* 996, 997. [6] 'Ayes' 123, 'Noes' 212; *ibid.* vol. clxxvi. 47.
[7] *Ibid.* 43–46. [8] *Ibid.* vol. clxxx. 416. [9] *Ibid.* 425–427. [10] *Ibid.* 427.

In 1866 Mr. Berkeley again had recourse to a resolution instead of a bill[1]:—

'Having regard to the failure of all direct legislation against corrupt practices at parliamentary elections, it is expedient to make an experiment of the system of taking the votes at such elections anonymously, according to the laws now in force in other parts of Her Majesty's dominions.'

The motion was defeated by a majority of 87.[2]

Although Mr. Berkeley was still a member of the House of Commons, he made no effort to bring the question of the ballot before that House in 1867 or 1868.

After the general election, at which he was again returned to parliament, Mr. Berkeley deputed Mr. Leatham to represent him, being compelled to be absent on account of ill health.[3] In the Queen's Speech was a recommendation that a parliamentary inquiry should be instituted into the then 'present modes of conducting parliamentary and municipal elections';[4] and on March 4, 1869, Mr. Bruce,[5] the then home secretary, moved for,[6] and obtained,[7] a select committee on the subject.

The Marquess of Hartington was elected chairman. The object indicated in the Queen's Speech was 'to provide further guarantees for the tranquillity, purity, and freedom' of elections. Mr. Leatham was dissatisfied with the generality of the terms of the reference; and on March 16 moved[8] that 'it be an instruction to the committee to take into consideration the various methods of balloting, and report upon the most convenient system.' Mr. Gladstone opposed the instruction,[9] on the ground that the terms of the reference included this; and the motion was withdrawn.[10]

The select committee was reappointed, on the motion of its chairman, at the commencement of the next session[11]; but, before it had time to circulate its report, which showed a considerable diversity of opinion amongst its members, the

[1] Hansard's *Parl. Debates*, third series, vol. clxxxiv. 983.
[2] 'Ayes' 110, 'Noes' 197; *ibid.* 996.
[3] *Ibid.* vol. cxciv. 1470.
[4] *Ibid.* 32.
[5] Now Lord Aberdare.
[6] Hansard's *Parl. Debates*, third series, vol. cxciv. 648.
[7] *Ibid.* 663.
[8] *Ibid.* 1470, 1498.
[9] *Ibid.* 1518.
[10] *Ibid.* 1523.
[11] *Ibid.* vol. cxcix. 188.

irrepressible Mr. Leatham asked for leave to introduce a bill to provide that the poll at parliamentary and municipal elections should be taken by ballot.[1]

Leave was granted,[2] and the bill was read a first time.

Great embarrassment was caused, both to the Government and to the House of Commons, by the course which Mr. Leatham thought fit to take, of moving the second reading of his bill before there was time to consider the report of the select committee on parliamentary and municipal elections,[3] and frequent divisions took place. Eventually the debate was adjourned.

In the meantime the Marquess of Hartington introduced his Parliamentary Elections Bill, and it was read a first time.[4] The bill never reached the second reading. It was withdrawn.[5]

When Mr. Leatham's bill was again discussed, some months later in the session, Mr, Gladstone appeared on the scene, and summed up, very accurately, his previous achievements in connection with the subject of the Ballot[6]:—

'I believe I have never opened my lips on this subject in the House of Commons, though I have frequently voted upon it, and *have always voted against the Ballot.*'

Mr. Gladstone based his most recent apostacy on the Reform Act of Mr. Disraeli:—

'In substance, the change which has been made in the constitution of our parliamentary system within the last few years is the basis of the change which will be made in my conduct with regard to secret voting.' Mr. Gladstone contended that Lord Palmerston's argument that the franchise was a 'trust,' no longer applied. The extension of household suffrage to the counties was a 'simple question of time and convenience.' 'That being so, there was no longer a limited constituency, exercising a trust on behalf of the whole people.'

'The basis on which parliament desires to found the representative system of the country is a basis not less wide than

[1] Hansard's *Parl. Debates*, third series, vol. cxcix. 268.
[2] *Ibid.* 284. [3] See *ibid.* vol. cc. 10–60. [4] *Ibid.* vol. cci. 431–454.
[5] *Ibid*, vol. cciii. 408, [6] *Ibid*, 1028–1034.

that of the entire nation.' Mr. Gladstone, confounding household suffrage with manhood suffrage, then refuted his own argument by showing that 'the adult male' is a 'trustee' for 'his own wife and children,' even if everybody else were enfranchised!

Mr. Disraeli saw his opportunity, and shattered Mr. Gladstone's flimsy pretexts for his 'conversion':—

'The great principle on which Lord Palmerston laid stress was that the franchise was to be looked upon as a trust; and, though that opinion appears to have been accepted by the right hon. gentleman during the lifetime of Lord Palmerston, the right hon. gentleman to-day has directed his efforts and energy to demolish the justice of that position. I cannot say, speaking for myself, that I have ever looked upon the franchise as a trust. I have always looked upon the franchise as a privilege; and it was a privilege that I, for one, was very glad to see greatly extended. I cannot agree with the right hon. gentleman that his conversion to the Ballot is to be justified by the recent extension of the suffrage. On the contrary, I have always thought that the wider the suffrage the less claim there will be for the adoption of the Ballot. I have no doubt myself that, the larger the constituency, the less will be the inclination or the opportunity to bring improper influence to bear on the exercise of the franchise by that constituency.'[1]

Mr. Disraeli was very sarcastic on Mr. Gladstone's inconsistency in announcing his intention to vote for the second reading of a private members bill, while 'declining to ask the opinion of the House on his own measure.'[2]

The Parliamentary and Municipal Electors Bill, 1871

'Although Mr. Berkeley succeeded in carrying his resolution in favour of the Ballot nearly thirty years before, the subject did not come before the Peers until 1871.'[3]

I have shown that, in the estimation of Mr. Berkeley

[1] Hansard's *Parl. Debates*, third series, vol. cciii. 1034–1038.
[2] Mr. Leatham's bill was read a second time without a division. *Ibid.* 1039.
[3] *Fifty Years of the House of Lords*, p. 37.

himself, the 'carrying of his resolution in favour of the Ballot,' in 1848, was 'an accident, and did not truly represent the opinion of the House of Commons.' The subject of the ballot had come before the House of Lords once previously, i.e. in 1860, when it appeared that the Ballot mustered four or five supporters in that House.[1]

What occurred in 1871 I can best describe in the language of an impartial critic:—

'After five and thirty years of opposition to the principles of secret voting, Mr. Gladstone,' says the 'Annual Register' for 1871,[2] 'stood forward as a sudden convert, and ostentatiously and imperiously declared that the bill must and should pass the Commons before the session was concluded. It cannot be maintained that there was any pressing demand for the measure in the country, or that it was desirable for other than party purposes. The Liberals had been seriously disunited by the failures and divisions of the session, and the minister saw in this measure a means to reunite them.'

'Smarting under the sense of defeat on the abolition of purchase in the army, the Lords threw out the Ballot Bill by 97 to 48.'[3]

This idea, that there was some connection between the abolition of purchase by royal warrant and the rejection of the Ballot Bill, in 1871, is not original. It is copied from 'Forty Years of the House of Lords':—

'The labours of half a session were frustrated—measures affecting the life and happiness of millions were postponed—to gratify a paltry vexation at their defeat by the royal warrant.'[4] 'How many workmen,' adds Mr. Bowen-Graves, in a fit of melodramatic woe,[5] 'have been ground down by truck, how many colliers have lost their lives in the pits, in order that the Lords might enjoy the luxury of voting the Ballot too late for consideration!' There was no bill before the House of

[1] Amongst them was Earl de Grey and Ripon, afterwards Marquess of Ripon.
[2] *Annual Register* for 1871, p. 85 ('History').
[3] *Fifty Years of the House of Lords*, p. 37.
[4] The *Fortnightly Review* for February, 1873, p. 233.
[5] *Ibid.* p. 248.

Commons in relation to 'truck' (a rather 'parlous' subject, as I have shown,[1] for Radicals) and, as for the Mines Regulation Bill, it was received in the House of Commons with a chorus of disapprobation, and Mr. Bruce, the Home Secretary, was urged to take his time about it, and not hurry it on, as he was doing.[2] Not the faintest allusion was made to the Ballot Bill being in the way! The Government knew their own mind so little on the subject that they introduced a single measure at first, and then split it into two bills—a Metalliferous Mines Regulation Bill and a Coal Mines Regulation Bill! The statement of Mr. Bowen-Graves that 'measures affecting the life and happiness of millions were postponed' by the Commons on account of the Ballot Bill, is as pure a figment as his other statement that the Ballot Bill was thrown out by the Lords 'to gratify a paltry vexation at their defeat by the royal warrant.' It really is scandalous that such utterly baseless assertions should be made to try and bolster up a case against the Peers!

At whose instance was the Ballot Bill rejected? At the instance of one who was the best friend the working-classes ever had!

The second reading of the Parliamentary and Municipal Elections Bill, better known by its shorter title, the 'Ballot Bill,' was not moved by the Lord President of the Council, Earl de Grey and Ripon, till August 10, exactly eleven days before the prorogation of parliament! *The Earl of Shaftesbury* moved its rejection,[3] on the ground stated by Mr. Bowen-Graves, that the bill was 'too late for consideration.'

Earl Russell, who so often, as prime minister, had opposed the Ballot, vindicated his principles now, like an honest man, by voting against the bill.[4]

'The fate of the measure,' says the 'Annual Register' for 1871,[5] 'had been clearly foreseen. It is probable that the House of Lords would, in any case, have rejected the

[1] See Chap. XIX. *supra* (William IV.), 'The Truck Acts.' See also Mr. Bruce's answer to Mr. Mundella, Hansard's *Parl. Debates*, third series, vol. ccix. 320.

[2] See the debate, *ibid.* 808–818.

[3] *Ibid.* vol. ccviii. 1264–1272.

[4] *Ibid.* 1307. See, also, 1303.

[5] P. 86 ('History').

bill, especially as the old Whigs, represented by the Duke of Somerset and Lord Lyveden, still retained the opinions which, until lately, had been shared by Mr. Gladstone and his principal colleagues. The Duke of Somerset made a spirited attack on the Government.' 'So deep,' indeed, 'was the scission between the Peers and the Government that only forty-eight peers could be induced to vote for the Ballot Bill at all, the rest of the Liberal peers preferring to stay away.' The 'Annual Register'[1] then alludes to the 'indignation meetings,' in the autumn,' by which 'the country' was 'little stirred.'

The Parliamentary and Municipal Elections Act, 1872 (35 & 36 *Vict. cap.* 33)

'For the second time,' says the 'Annual Register' for 1872,[2] 'the Ballot Bill formed the main occupation of the session, and, after many checks and delays, caused by the obvious indifference and latent disapproval of the House, Mr. Forster accomplished his unsatisfactory task. The promoters of the bill candidly admitted that the House of Lords had been justified in previously rejecting an incomplete measure which was only brought under their consideration at the end of a session.'

Mr. Gladstone was twice defeated in the course of the progress of the bill through committee in the House of Commons. The first defeat was inflicted on the Government by Sir William Harcourt, who succeeded in carrying, by a majority of 1,[3] an amendment to substitute 'with corrupt intent' for 'wilfully' in a Government-supported penalty for 'displaying' his ballot paper, moved by Mr. Leatham. The provision of a penalty in such a case had been accidentally 'overlooked,' Mr. Forster said,[4] by the Government. The second defeat was a more decisive one. It took place on Mr. Leatham's provision (*minus* the word 'wilfully') of a penalty on the voter for 'displaying his ballot paper.' The committee divided: 'Ayes' (for the Government) 246, 'Noes' 274, majority

[1] P. 86 ('History'). [2] P. 61 ('History').
[3] 167 to 166; Hansard's *Parl. Debates*, third series, vol. ccx. 1303.
[4] *Ibid.* 1297.

against the Government, 28! About forty Liberals voted in the majority, and twelve Liberals absented themselves! The voter was thus relieved from any penalty for 'displaying' his ballot paper, but a mitigated penalty was imposed upon any one who 'induced' the voter to 'display' it![1]

'In 1872, although no additional reason had been advanced in its favour beyond the fact that there had been an autumnal agitation against the House of Lords, they read the bill a second time by 88 votes to 58.'[2]

As for 'additional reasons' in favour of the bill, there was the evident fact, frequently referred to in the debate, that the bill had been sent up in reasonable time, so that discussion took place on June 10th instead of August 10th; there was the equally evident fact, frequently referred to in the debate, that the bill did not now come before the House of Lords for the first time. The bill had been again carried in the Lower House by large majorities. The Peers, in short, bowed to the will of the people, as shown by the emphatic approval of the bill by the people's representatives. Could any course be more constitutional?[3] Some of the leading members of the House of Lords adopted in 1872 a course similar to that pursued by the peers who were opposed to the Reform Bill of 1832—they refrained from voting against it.

'The bill ultimately became law without any further mutilation beyond an infringement of the secrecy of the ballot in the case of illiterate voters and the limitation of the bill to a period of seven years.'[4]

The case of the 'illiterate voter' was one in which I took considerable interest. I initiated a discussion in committee on the Parliamentary and Municipal Elections Bill, 1872, which led to a recognition of his existence.

'I object,' I said,[5] 'to the bill as it stands, because it would disfranchise the very persons whom it was designed to protect. Illiterate voters are generally dependent, and the object of

[1] See, as to these points, the *Annual Register* for 1872, pp. 62, 63 ('History'). [2] *Fifty Years of the House of Lords*, p. 37.

[3] 'The opposition (?) of the Commons led them to reconsider their position.' *Fifty Years of the House of Lords*, p. 37. [4] *Ibid.*

[5] Hansard's *Parl. Debates*, third series, vol. ccxi. 107–110.

the bill is to protect dependent voters. What a mockery it is to say to these dependent voters, "We will protect you by enabling you to vote secretly," when, at the same time, you, in effect, tell them, "We will make the mechanical process of recording your votes so difficult that you won't be able to understand it, and, therefore, will be practically disfranchised!" . . . To defraud the working-classes of the extended franchise given to them in 1867 by the right hon. gentleman the member for Buckinghamshire is a policy on the part of the prime minister which may, indeed, be correctly described as "combining the maximum of Liberal profession with the minimum of Liberal result."'[1]

There was a majority of 154 in favour of *the principle* of my amendment to safeguard the votes of those who were so 'unable to read';[2] but Mr. Forster completely spoilt the concession which he made by inserting on the report[3] in the 26th paragraph of the first schedule of the bill words which would compel the unhappy illiterate voter to make a declaration before a magistrate that he was 'unable to read,' and produce this declaration to the presiding officer before he could claim to have his ballot paper marked for him! Sir William Harcourt denounced the proposal[4]—'a respectable illiterate voter would rather not vote at all than go through the ordeal that was proposed.'

The House of Lords threw out this proposal[5] by a majority of 32.[6] On the return of the bill to the Commons Mr. Forster accepted the Lords' amendment allowing the declaration to be made in the polling booth prior to the marking of the ballot paper.[7]

Mr. Forster at the same time accepted the other Lords' amendment, referred to by the writer of the 'small work,' limiting the duration of the bill to 1880.[8]

[1] See the whole debate, Hansard's *Parl. Debates*, third series, vol. ccxi. 107–123. [2] *Ibid.* 130. 'Ayes' 242, 'Noes' 88.
[3] *Ibid.* 557, 675–679. [4] *Ibid.* 558–560.
[5] *Ibid.* 1845–1847. 'Contents' 59, 'Not Contents' 91.
[6] *Ibid.* vol. ccxii. 1047.
[7] See schedule 1, sect. 26, of the 35 & 36 Vict. cap. 33.
[8] Hansard's *Parl. Debates*, third series, vol. ccxii. 1047.

The writer of the 'small work' has, however, omitted to mention a still more important 'Lords' amendment' to this bill which was accepted by the Government—the violation of the secrecy of the Ballot to the extent of allowing a scrutiny.[1]

'The strongest argument,' said Mr. Forster, 'in favour of a scrutiny, is that a bad vote may be traced under it, and struck out.'

The 'Annual Register'[2] thus pithily sums up:—'A great constitutional change was completed, after a controversy of forty years, in spite of the all but unanimous hostility of the House of Lords, the secret disapproval of the House of Commons, and the indifference of the general community.'

Mr. Harold Spender makes the absurdly incorrect statement that 'the Ballot Act was perhaps the heaviest blow at aristocratic ascendency that has been delivered since 1832.'[3]

The exact reverse is much nearer the truth. The employers of labour are, largely, Nonconformists and Radicals and opposed to the House of Lords, while the working-classes are, to a considerable extent, churchmen and Conservatives and admirers of our ancient Constitution. Through the instrumentality of carefully-selected Radical foremen and overlookers, the Radical employers of labour used, under the system of open voting, to coerce their workmen into voting for Radical candidates. The ballot has released the Conservative workmen from this system of grinding tyranny.[4]

Corrupt Practices

I have dealt with this subject in relation to the reign of King William IV.[5] It now becomes my duty to refer to it in relation to the reign of Queen Victoria.

'The House of Commons,' says the writer of the 'small work,'[6] 'sent up in 1848 a bill to the House of Lords which ordered a special commission to investigate corrupt practices in constituencies where a committee of the House of Commons

[1] Hansard's *Parl. Debates*, third series, vol. ccxii. 291.
[2] P. 72 ('History'). [3] *The House of Lords*, p. 23.
[4] The first election, after the Ballot Act, put Mr. Disraeli in power again. [5] See Chap. XIX. *supra*. [6] P. 35.

reported they prevailed. As it did not reach the Lords till August 24 their lordships decided it was too late to consider it, although parliament did not rise till September.'

'1848. Corrupt Practices at Elections Bill. Passed Commons, rejected by Lords by evasive (want of time) amendment.'[1]

Long before the date mentioned by these two writers 'an Act for the better Discovery and Prevention of Bribery and Treating at the Election of Members of Parliament'—the 5 & 6 Vict. cap. 102—had received the royal assent in 'this beneficent reign.' The House of Lords had passed this measure unanimously; and Lord Brougham, who took quite a leading part in advocating legislation on this subject, had expressed his agreement with Lord Campbell, who had charge of the measure, that it 'would do much good.'[2]

The Bill of 1848, as the author of 'Fifty Years of the House of Lords' admits, 'did not reach the Lords till August 24.' The reason is plain. It was not introduced into the House of Commons till July 13![3] 'Parliament did not rise till September.' This is quite true; but Parliament was prorogued on September 5, just twelve days after the second reading of bill, without a division, in the Lords! Lord Redesdale said[4] that 'the "print" of the measure had only been delivered that morning.' He 'should offer no opposition to the second reading,' but 'he hoped that it would not be further pressed.' The lord president of the council[5] said[6] he 'readily acceded to the suggestion of the noble lord.'

'A Bribery Bill was passed through all its stages and sent up to the House of Lords' in 1849, 'in time to be read a first time on July 16.'[7]

That may be; but nobody moved the second reading till July 30, two days before the prorogation of Parliament,[8] and

[1] *The House of Lords; a Retrospect and a Forecast*,' by T. A. Spalding, LL.B., appendix, pp. 263, 265.
[2] Hansard's *Parl. Debates*, third series, vol. lxv. 1062.
[3] *Ibid.* vol. c. 470.
[4] *Ibid.* vol. ci. 483.
[5] The Marquess of Lansdowne.
[6] *Ibid.* 484.
[7] *Fifty Years of the House of Lords*, p. 35.
[8] Hansard's *Parl. Debates*, third series, vol. cvii. 1110. Parliament was prorogued on August 1.

then it was brought on, without notice, by Lord Milford, who moved to suspend the standing orders, to enable him to do so!

The House of Lords was asked to 'pass this bill through all its stages in the course of one day,'[1] although it had only passed the second reading in the House of Commons, after long discussions, by a majority of 33![2] Earl Grey 'admitted at once it was a bill that ought not to pass during the present session. It was a bill that required consideration, and he should not object to its being postponed.'[3] The lord president of the council[4] said he 'had never expressed the least interest in the bill.'[5]

'The Peers threw it out on the motion for second reading, chiefly on account of the "monstrous" proposition, that when a man had been declared by the unanimous verdict of an election committee to have been guilty of bribery, he should be struck off the electoral list for the rest of his life.'[6]

The expression 'monstrous' was an ejaculatory observation of the chief advocate of the repression of bribery, Lord Brougham,[7] in the course of Lord Stanley's speech!

The writer of the 'small work' speaks of 'drastic' and 'Draconian' corrupt practices bills;[8] but not one of those now in force inflicts a heavier disfranchising penalty on a voter, 'convicted on indictment' of any corrupt practice, than incapacity to be registered as an elector, or to vote at any election during a period of seven years.[9] Disfranchisement for life, under the bill, was to follow upon the verdict of a committee of the House of Commons. That judgment was to be passed upon the voter by a tribunal before whom he had never been heard; and he might not even be aware of the accusation. Lord Brougham said[10]:—'I object to trying a man in his absence, and condemning and punishing him in his absence, and without his knowledge.'

[1] Lord Stanley, afterwards Earl of Derby, Hansard's *Parl. Debates*, third series, vol. cvii. 1114.
[2] *Ibid.* vol. cii. 1074.
[3] *Ibid.* vol. cvii. 1114, 1115.
[4] The Marquess of Lansdowne.
[5] *Ibid.* 1116.
[6] *Fifty Years of the House of Lords*, p. 35.
[7] Hansard's *Parl. Debates*, third series, vol. cvii. 1113.
[8] P. 34.
[9] 46 & 47 Vict. cap. 51, sect. 6. 'Corrupt Practices Prevention Act,' 1883.
[10] Hansard's *Parl. Debates*, third series, vol. ccvii. 1115.

The bill was rejected by the House of Lords, *nem. con.*[1]

The Custody of Infants
(36 *Vict. cap.* 12; 49 *and* 50 *Vict. cap.* 27; 54 *Vict. cap.* 3)

'In 1838 the House of Lords rejected, by 11 votes to 9, the Custody of Infants Bill.'[2]

This name is a misnomer. The bill did not, under any circumstances, take 'the custody' of the children from the father, and was therefore quite inadequate to deal with the evils complained of. The name given by Mr. Spalding[3] is more correct—'Access of Mother to Children Bill.'

The bill was opposed in the Commons over and over again,[4] by one of the most eminent equity lawyers that England has produced, Sir Edward Sugden, afterwards Lord St. Leonards, lord chancellor in the Earl of Derby's first administration, 'distinguished for the extraordinary acumen of his mind.'[5]

'If this bill,' he said,[6] 'were suffered to pass, the proper title to designate it by would be, "A Bill to facilitate Separation and Divorce between Husbands and Wives."' The bill opened an extent of litigation which was perfectly frightful.[7]

Lord Lyndhurst, the Tory ex-chancellor, moved,[8] as Mr. Spalding points out,[9] the second reading of the bill, and Lord Brougham, the ex-chancellor of Earl Grey and Viscount Melbourne, moved its rejection.[10]

Lord Brougham denounced the title of the bill—'An Act for providing for the more easy Access of Parents to their Children'—as 'fraudulent.' His noble and learned friend 'confined his feelings to London and Westminster!' Why did he not go into the provinces? 'What security was there that the wife would not run away with the children?' 'How

[1] Hansard's *Parl. Debates*, third series, vol. cvii. 1116.
[2] *Fifty Years of the House of Lords*, p. 56.
[3] Pp. 209–212, 263, 265.
[4] On the second reading, Hansard's *Parl. Debates*, third series, vol. xl. 1114; on the report, *ibid.* vol. xlii. 1050; on the third reading, *ibid.* vol. xliii. 143. [5] *Ibid.* vol. xliv. 773. [6] *Ibid.* vol. xliii. 144.
[7] *Ibid.* vol. xl. 1118. [8] *Ibid.* vol. xliv. 772–779. [9] Pp. 210, 211.
[10] Hansard's *Parl. Debates* third series, vol. xliv. 779–788.

could they prevent the mother from alienating the affections of the children from the father?'

With reference to such brutes of husbands as were referred to by Lord Lyndhurst, Lord Brougham said:—'I would have no *divisum imperium*. I would take the custody of the children entirely from the guilty father, and transfer them to the care of the mother, or such other person as, under the circumstances of the case, it may seem proper to name for that purpose.'

The view thus taken by Lord Brougham has been adopted by the legislature.[1]

The decision in the case of this bill 'by a majority of 2 in a House composed of 20 members,'[2] which, in the House of Commons, would have led to a 'count out,' seems to me an argument in favour of raising the quorum of the Lords, a reform of which I approve, and which has, practically, been carried into effect by the House of Lords itself.[3]

Sheep-stealing (*Ireland*) *Bill*, 1839

'A curious vote of the House of Lords in 1839 rejected a bill imposing a fine of 5*l*. on a man in whose possession the flesh or fleece of a sheep was found, without his being able to explain how he came by it. Their lordships decided that such a criminal in Ireland must continue liable to be hanged or transported.'[4]

The author of the 'little work' appears to think that 'a man in whose possession the flesh or fleece of a sheep was found, without his being able to explain how he came by it,' was something different from a sheep-stealer.

The very point was raised in the House of Lords by the Earl of Wicklow.[5] Lord Brougham, no mean authority, explained that 'if the mutton or skin was found in the man's possession and he was unable to account for it, he would be supposed to have stolen it, on proof that it was the property

[1] See e.g. 36 Vict. cap. 12; 49 & 50 Vict. cap. 27, and 54 Vict. cap. 3.
[2] P. 211 of *The House of Lords*, by T. A. Spalding, LL.B.
[3] See Chap. XXIX. (*Reform of the House of Lords*) *infra*.
[4] *Fifty Years of the House of Lords*, p. 22.
[5] Hansard's *Parl. Debates*, third series, vol. l. 219.

of another person. He never knew a case of sheep stealing in which there was any evidence of the taking.'

Lord Brougham's chief objection to the bill was this. It was based on the principle of making the Irish law dissimilar from the English. 'I am at a loss to know,' he said,[1] 'why a felony committed in Ireland should be punished by a [pecuniary] penalty, when in this country the punishment for a similar felony used to be hanging,[2] and is now transportation for life.'

A similar objection had been raised on the second reading by the Duke of Richmond.

'I do not see any sufficient reason,' he said,[3] 'why there should be a different law for sheep stealing in Ireland from that which is in force in England. The law formerly in force relative to sheep stealing was repealed, when Sir Robert Peel consolidated the criminal law, and repealed after a great deal of consideration. I want to know why that law should now be re-enacted in Ireland, with very little consideration at all?'

Lord Brougham moved that the report of the proceedings in committee on the bill be received that day three months, which was agreed to, *nem. con.*[4]

I see nothing curious in the House of Lords following the advice of an ex-chancellor; and surely the writer of the 'small work' cannot object to him, as he was the joint author with Earl Grey of the Reform Act of 1832!

The Lord-Lieutenancy of Ireland

The author of 'Fifty Years of the House of Lords' complains[5] of the retention of the lord-lieutenancy of Ireland, and blames the House of Lords for it. The author of 'The House of Lords, an Anomaly and a Danger,'[6] no mean competitor for the suffrages of the reading public, exposes the 'downright falsification of facts' by the author of 'Fifty Years of the House of Lords' so vigorously and effectually

[1] Hansard's *Parl. Debates*, third series, vol. l. 218.

[2] This would seem to show that the writer of the 'small work' is in error when he says that it was a *hanging* matter then.

[3] Hansard's *Parl. Debates*, third series, vol. l. 194.

[4] *Ibid.* 219.

[5] P. 21.

[6] Mr. T. A. Spalding, LL.B., in *The House of Lords, an Anomaly and a Danger*, published by the Eighty Club, p. 7.

that I cannot refrain from citing the passage in which Mr. Gladstone's favourite pamphleteer is unmercifully castigated :—'In a pamphlet entitled "Fifty Years of the House of Lords," originally published in 1880, and recently reprinted, it is stated that the lord-lieutenancy of Ireland "still exists, owing to the intervention of the House of Lords. In 1850 the bill for its abolition was carried through the House of Commons, by 295 to 70 votes, but it was extinguished in the House of Lords, owing to the opposition of the Duke of Wellington." This is hardly a luminous method of stating that the bill in question, after passing the second reading in the House of Commons, was abandoned by the government, apparently on account of the opposition of the Irish members, and that, consequently, it never came before the House of Lords. The statement diverges from the facts so considerably that an opponent could hardly be censured severely if he denounced it as *a downright falsification* of them.'

The very index to the 'Annual Register' for 1850[1] ought to have saved the author of 'Fifty Years of the House of Lords' from this severe but well-merited castigation at the hands of a rival.

'Mr. Grattan,' says the 'Annual Register,'[2] 'in a speech of great vehemence, abounding in satire and invective, denounced the measure as "a destruction of the last remnant of Irish nationality."

'Mr. Maurice O'Connell objected to it as "striking a blow, that must ultimately lead to a severance of the two countries."

'Colonel Dunne objected to it "as the consummation of the injuries and insults which had been heaped by England upon Ireland ever since the Union." '[3]

'Fifty Years of the House of Lords' was written six years before the introduction of a Home Rule Bill.

The retention of the lord-lieutenancy of Ireland was essential to the Home Rule Bill. That bill hinged upon the Irish viceroyalty, and would have fallen to pieces, like a pack of cards, without it. The functions of the lord-lieutenant,

[1] *Sub voce* 'Parliament.' [2] P. 105 ('History').
[3] *Ibid.* p. 107.

under the suggested new *régime*, were so multifarious and so contradictory, as he was to carry out at one time the wishes of his English masters, and at another time the wishes of his Irish masters, that one of the sharpest controversies on the bill arose upon his duties.

The Government of India Act, 1858 (21 & 22 *Vict. cap.* 106)

'The House of Lords vetoed the introduction of competition into the scientific corps of the Indian army in 1858.'[1]

There is not a shadow of truth in this statement.

Lord Stanley, who had charge of the measure, said, when the Lords' amendment was under consideration by the House of Commons, 'If the Lords' amendment would have the effect of destroying the principle of free examination, I would rather resign office than assent to it. But it will have no such effect. I had originally intended to recognise in an act of parliament, instead of in an order in council, the right of admission to the public service by competition.[2] When that change was proposed, we were told that it would be quite opposed to constitutional practice, inasmuch as it would be to give to [military] appointments the sanction of a parliamentary title. There is, so far as I can ascertain, no precedent for adopting such a course.'[3] The Lords' amendment had, in consequence, been introduced in committee in the Upper House by his father, the Earl of Derby, then prime minister, who 'made a spirited reply' to the Earl of Ellenborough when he 'warmly opposed the scheme of giving appointments to the scientific branches of the Indian army by competition.'[4]

Mr. Disraeli, then chancellor of the exchequer, moved,[5] when the Lords' amendment was again considered by the Commons, that 'this House doth not insist on its disagreement to the amendment.'

[1] *Fifty Years of the House of Lords*, p. 58.
[2] *Annual Register* for 1858, p. 128 ('History').
[3] Hansard's *Parl. Debates*, third series, vol. cli. 2195.
[4] *Annual Register* for 1858, p. 127; Hansard's *Parl. Debates*, third series, vol. cli. 1682.
[5] Hansard's *Parl. Debates*, third series, vol. cli. 2324–2331.

'It does not appear that the Lords at all object to the principle of competition being applied to the scientific branches of the Indian army. What the Lords object to, in the 34th clause, is not the principle of competition, or its being secured with respect to the scientific branches of the army as amply as it has been secured with regard to the civil service since 1853, but to this being done in a manner which would seem to violate the constitutional principle which has prevailed in all appointments to the military service. It certainly does seem rather inconsistent that in the very bill which provides that Her Majesty shall appoint to all military commissions, we should, at the same time, insert a provision which makes the appointments to a certain portion of these commissions entirely independent of the will of Her Majesty.'

Viscount Palmerston supported the government,[1] and the House of Commons decided to accept the Lords' amendment by a majority of 98 to 53,[2] and, therefore, the House of Commons is as responsible as the House of Lords for the policy adopted.

Paper Duty Repeal Bill, 1860

'Among the miscellaneous measures which afforded the Lords an opportunity of registering their dissent from the wishes of the nation was the proposed abolition of the paper duties.'[3]

It is not true that 'the wishes of the nation' were dissented from in this matter by the Lords, in 1860.

The Duke of Argyll was lord privy seal in Lord Palmerston's government; and in the debates in the House of Lords on the repeal of the paper duty, in 1860, he 'explained and vindicated, in a long and able speech, the financial policy of the government.'[4]

Yet the Duke of Argyll at Glasgow, on November 1, 1893, said:—'The finances at that time were in extreme confusion;

[1] Hansard's *Parl. Debates*, third series, vol. cli. 2336.
[2] *Ibid.* 2347.
[3] *Fifty Years of the House of Lords*, p. 57. '1860: Paper Duties rejected'; *House of Lords*, by T. A. Spalding, LL.B., appendix, p. 266.
[4] *Annual Register* for 1860, p. 79 ('History').

there was an enormous deficit. There was a new treaty with France, of which the country was very jealous, involving a large sacrifice of revenue, and there was a proposal to increase the income tax to a most pinching degree. The people had made up their minds that the budget was a rash one, and that, if revenue was to be sacrificed, it would be better to spend it on tea and sugar.' [1]

'There was,' said Mr. Goschen at Edinburgh,[2] 'a 10*d.* income tax, and the tea duties stood at 1*s.* 5*d.* per lb.; and it was held that, under the conditions of the time, the repeal of the paper duties was injudicious. The prime minister of the day, Lord Palmerston, himself informed the Queen that he considered the Lords had a very strong case for what they had done.'

The state of public feeling was distinctly hostile to the proposal to turn the surplus into a deficit by repealing the paper duties, and to cover this artificial government-created deficit by a 10*d.* income tax. The 'Annual Register' for 1860 said[3]:—'Of all the proposed financial changes, the repeal of the paper duty was that which was regarded with the least favour.'

Mr. Banks Stanhope said[4]:—'The question was whether, in order to take off a tax which might be burdensome to a small part of the community,[5] they would add, in time of peace, to an odious burden.'

Mr. Horsman said[6]:—'The question was whether most benefit would be conferred by remitting the tea and sugar duties, or the paper duty. The difference was that the one affected the labouring class, the other affected a rich class. Most benefit would be conferred by remitting the tea and sugar duties.'

Mr. Gladstone 'admitted[7] that the remission of the war duties on tea and sugar would afford great relief.'

On the third reading of the Paper Duty Repeal Bill, Sir

[1] The Duke of Argyll, at Glasgow, *Times*, November 2, 1893.
[2] October 3, 1893; *Times*, October 4, 1893.
[3] P. 69 ('History').
[4] *Ibid.* pp. 69, 70; Hansard's *Parl. Debates*, third series, vol. clvii. 372.
[5] Paper-makers and proprietors of penny newspapers.
[6] *Annual Register* for 1860, p. 71. [7] *Ibid.* p. 72.

Stafford Northcote moved 'that the present state of the finances of this country renders it undesirable to proceed further with the repeal of the excise duty on paper.' This was negatived by a majority of 9 only.[1]

The Earl of Derby, in supporting the motion of Lord Monteagle for the rejection of the Paper Duty Repeal Bill, said:—

'I do not object to the repeal of the paper duties, if you can afford to do so; but I do object, when our finances are in an undue, or rather a hopeless, deficiency in 1861–2, and when, with the prospect of foreign disturbances, of greatly increased taxation, of a large military and naval expenditure, with the necessity of incurring great expense in fortifications and in the national defences, you voluntarily deprive yourselves of a source of permanent revenue, collected without difficulty and yielding 1,400,000*l.* a year.'[2]

The bill was rejected by the Lords by a majority of 89.[3]

The very resolutions which Lord Palmerston moved,[4] in a statesmanlike and conciliatory speech, in vindication of the sole right of the House of Commons to originate money bills, admitted, as an historical fact, that 'the lords have exercised the power of rejecting bills, of several descriptions, relating to taxation, by negativing the whole.' The present was a case, not of granting supplies, but of repealing an impost. 'We find,' said Lord Palmerston, 'that between the year 1714 and the present time there have been about thirty-six cases of bills for repealing duties, or imposts, of some kind or other, which have been sent up to the Lords and have been rejected by them, or, at least, have not come down to this House again.'[5]

'The legal right of the Lords,' says Lord Farnborough,[6] 'as a co-ordinate branch of the legislature, to withhold their assent from any bill whatever, to which their concurrence is desired, is unquestionable.'

On Lord Fermoy's abortive motion to censure the House

[1] 219 to 210; Hansard's *Parl. Debates*, third series, vol. clviii. 967 *Annual Register* for 1860, p. 75 ('History').
[2] Hansard's *Parl. Debates*, third series, vol. clviii. 1542.
[3] 193 to 104; *Ibid.* 1545.
[4] *Ibid.* vol. clix. 1384–1396. [5] *Ibid.* 1388, 1389.
[6] May's *Parliamentary Practice*, 10th edition (1893), chap. xxii. p. 550.

of Lords, Sir John Trelawny, a Radical (of church rates fame), gave a most amusing description of Mr. Gladstone's conduct[1]:—

'The noble Lords, in another place, rejected that measure which the Chancellor of the Exchequer recommended; and they all heard the right hon. gentleman come down to that House, and denounce the proceedings of the House of Lords in language on the verge of revolutionary—language almost as strong as any that was used at Chartist meetings out of doors. Their feelings were aroused by his eloquent invective; they sympathised with his demand for "action." But to what a lame, impotent conclusion had the matter been brought, when the right hon. gentleman came down to the House last night and, swallowing his indignation and putting his tail between his legs, accepted the act of the House of Lords.'[2]

Mr. Clay, a Liberal member, said[3]:—

'The traditionary power of the House of Commons depended on the support of the people whom they represented, and it was useless to conceal the fact that in this matter the people were not heartily with them. The majority out of doors believed that the refusal of the House of Lords to repeal the paper duty was *financially wise*.'

'The Chancellor of the Exchequer,' says Mr. Dowell,[4] 'had accepted the estimates of the responsible permanent heads of the revenue departments, who, unfortunately, had taken the yield of the revenue in a period of cheap corn as the basis of their estimate of the revenue in a year which might be, as it proved to be, a period of dear corn.'

'The proposed abolition of the paper duties, rejected in 1860, was carried in 1861.'[5]

Abolition was carried in the Commons in 1860, as we have seen, by a majority of 9; in 1861 it was carried by a majority of 15. Actually six more votes! 'The wishes of the nation,'

[1] Hansard's *Parl. Debates*, third series, vol. clix. 2088.

[2] Compare this with Mr. Gladstone's recent conduct in relation to the Lords' amendments to the Parochial Councils Bill.

[3] Hansard's *Parl. Debates*, third series, vol. clix. 2090.

[4] *History of Taxation*, by Stephen Dowell, vol. ii. book iv. chap iv. p. 342.

[5] *Fifty Years of the House of Lords*, p. 57.

I think, were not very strongly expressed on either occasion, and it would have been quite open to the Lords to have simply rejected the measure a second time. But, as the 'Annual Register' points out,[1] 'the rejection of the bill in 1861 would have been probably fatal to Lord Palmerston's government.' The slender majority in 1861 was really a vote of confidence in Lord Palmerston.

This was plainly stated by the Earl of Derby[2] in the discussion on the second reading of the Customs and Inland Revenue Bill, in the Upper House:—'It was carried undoubtedly by a somewhat larger majority than carried the third reading last year—a majority of 15; but it is perfectly notorious that that majority, small as it is, was obtained by the votes of a certain number of gentlemen sincerely opposed to the removal of the paper duty, but more opposed to running the risk of disturbing Her Majesty's government or compelling them to resign or dissolve parliament.'

Circumstances were greatly changed. Mr. Gladstone now claimed a surplus of 1,923,000*l.*; and, instead of putting a penny on the income tax, he took a penny off. The net loss in the year owing to the repeal of the paper duty would be 665,000*l.*, the penny taken off the income tax would reduce the amount of that tax by 850,000*l.*, making altogether 1,515,000*l.*, so that, after deducting these remissions, there would remain a surplus of 408,000*l.*[3] The whole of the financial proposals of the government were placed in one bill, including the repeal of the paper duties. Mr. Horsman, who had been a junior lord of the treasury in Lord Melbourne's administration in 1841, and chief secretary for Ireland in the administration of Lord Palmerston from 1855 to 1857, delivered a remarkable speech in favour of the right of the House of Lords to control the House of Commons in matters of finance.[4]

'I am afraid,' said the Earl of Derby,[5] jocosely, 'the

[1] P. 69 ('History'), 1861.
[2] Hansard's *Parl. Debates*, third series, vol. clxiii. 718.
[3] *Annual Register* for 1861, p. 47.
[4] Hansard's *Parl. Debates*, third series, vol. clxii. 2134-2150.
[5] *Ibid.* vol. clxiii. 713, 714, 716, 718, 720, 725; debate on the late Duke of Rutland's motion for the rejection of the Bill.

Chancellor of the Exchequer has not shown himself sufficiently grateful to us, because we certainly contributed very largely to reduce the enormous deficiency there would have been upon the revenue, not of 1860–1, but of 1861–2, by the present we made to him of a million and a quarter of money, by continuing the paper duty. With a meekness worthy of all praise, the Chancellor of the Exchequer proceeded to frame his new budget to meet the altered circumstances of the year, and he at once took credit for the million and a quarter secured to him by "the unparalleled conduct of the House of Lords." I always admitted, and I am quite ready now to admit, that the paper duty is an objectionable tax, and one which, with an overflowing exchequer, it might be desirable to relieve the country from the pressure of. I am perfectly ready to admit that, upon a question of a repeal of a duty and the financial arrangements generally, it is not expedient that your Lordships, unless in very exceptional cases, should interfere with the discretion of the House of Commons.'

As to the right of the House of Lords to *amend* money bills sent up to them by the Commons, Lord Derby said:—

'A resolution of the House of Commons on the subject, except so far as they themselves can act upon it, is a piece of waste paper. Every constitutional authority concurs in giving to the House of Lords this right, if they choose to exercise it.'[1]

'In a constitutional point of view, we have an undoubted right to divide this bill into two, and send the two bills, both of them agreed to, down to the House of Commons for them to accept or reject as they please. That is a course which has much to recommend it in point of principle. Should circumstances ever arise so extreme as to justify us in taking that course, I hope your lordships would not be slow to vindicate your rights.'

Mr. Gladstone's *chef d'œuvre*, the Customs and Inland

[1] There was 'a decided advantage, both as to precedent and constitutional analogy, on the side of the Peers.' Hallam's *Constitutional History of England*, vol. iii. chap. xiii. p. 31. 'The Lords have never acknowledged any further privilege than that of *originating* Bills of Supply.' *Ibid.* 33.

Revenue Act of 1861,[1] certainly was a most extraordinary piece of patchwork!

'Most Gracious Sovereign, We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland in parliament assembled, towards raising the necessary *supplies* to defray your Majesty's public expenses, and making *an addition* to the public revenue, have freely and voluntarily resolved to give and grant unto your Majesty the several rates and duties hereinafter mentioned; and do, therefore, most humbly beseech your Majesty that it may be enacted; and be it enacted, by and with the consent of the Lords Spiritual and Temporal and Commons in this present parliament assembled, and by the authority of the same, as follows:—

'On and after October 1, 1861, *the duties* of excise now payable *on paper* of any denomination, and also the duties of customs now payable upon the importation of paper into the United Kingdom, *shall cease*.'

The Metropolitan Commons Act, 1866 (29 & 30 *Vict. cap.* 122)

This measure, introduced by the then first commissioner of works,[2] was styled the Commons (Metropolis) Bill,[3] and applied only to commons within fifteen miles of the metropolis. The chairman of the Metropolitan Board of Works was made an official commissioner.[4] But the bill was referred to a select committee in the Lower House,[5] which did not report till near the end of the session. The entire scope of the bill was then changed, without any discussion, in the final stages in the Commons,[6] and without any notice to those affected by the change. The title of the bill was changed; and it now applied to the suburbs of every town in the kingdom containing 10,000 inhabitants.[7]

[1] 24 Vict. cap. 20. See the preamble, sect. 4, and schedule (D).
[2] The Right Hon. W. F. Cowper.
[3] Hansard's *Parl. Debates*, third series, vol. clxxxii. 623.
[4] *Ibid.* vol. clxxxiii. 1281.
[5] *Ibid.* 1288.
[6] It passed through these stages in silence. *Ibid.* vol. clxxxiv. 1063, 1279.
[7] *Ibid.* 1703.

'In 1866, the House of Lords practically limited the operation of the bill to the commons around London.'[1]

The House of Lords simply restored the bill to its original shape.

What does Mr. Shaw Lefevre, in his recent work on 'Commons,'[2] say of this act, in the form in which it became law? He calls it 'a measure of great importance,' and adds: 'A very considerable number of the London commons have since been brought under its protection.'[3] There is not a word of censure of the Lords' amendments.

Inclosure Law Amendment Bill, 1872

'In 1872, after mangling the measure out of shape, the Lords threw it out at the bidding of the Duke of Northumberland, who saw in its clauses an invasion of the property rights of the lords of the manor.'[4]

I may at once dispose of the unwarrantable assertion that the Lords 'mangled the measure out of shape.' The Earl of Morley, who had charge of it, said,[5] after it had passed through committee, 'The main features of the bill have not been injured, remaining practically the same as when it was introduced into this House.'

The measure was substantially[6] identical with the Inclosure Law Amendment Bill of 1871, which was introduced by Mr. Shaw Lefevre, when under-secretary of state for the Home Department, and which fell through in the Commons, after having been referred to a select committee, who 'reported it with considerable amendments.'

'The principal objection to the bill,' said Mr. Bruce, in 1873,[7] 'was the compulsory appropriation, in all cases, for allotments and recreation grounds of a specified proportion of the lands to be inclosed.'

[1] *Fifty Years of the House of Lords*, p. 62.
[2] *English Commons and Forests*, by the Right Hon. G. Shaw Lefevre, M.P. (1894), p. 44.
[3] *Ibid.* p. 45. [4] *Fifty Years of the House of Lords*, pp. 62, 63.
[5] Hansard's *Parl. Debates*, third series, vol. ccxii. 1866.
[6] *Ibid.* vol. ccxvi. 433. [7] *Ubi supra.*

Under the Inclosure Act of 1845,[1] a discretion was vested in the Inclosure Commissioners of requiring, as a condition of their assenting to a proposed inclosure of common lands, the appropriation of allotments and recreation grounds.

'The most important change,' said the Earl of Morley, when moving the second reading of the bill in 1872, in the Lords,[2] 'is that of taking away from the Inclosure Commissioners a certain amount of their discretion as to the reservation of allotment and recreation grounds, and imposing upon them a minimum of reservation for such purposes.'

The bill was stigmatised as a measure of confiscation, denying alike any right of appeal or right to compensation—not merely 'an invasion of the rights of the lord of the manor,' but an invasion of the rights of the commoners. The bill was, nevertheless, read a second time, without a division, and passed through nearly all its remaining stages, a small majority[3] being recorded against it, on the report, on the ground that it was impossible for the House of Commons properly to consider it if it were sent down to them so late in the session.[4]

The debate disclosed that the information, as to the 'amount and distribution of uninclosed lands in England and Wales,' was inadequate, and an inquiry into the subject, as an essential preliminary to legislation, was, accordingly, directed by the Government.[5]

The Commons Act, 1876
(39 & 40 *Vict. cap.* 56)

'The Commons Act of 1876 was not much more than the tardy restoration of the clauses of the Commons Bills of 1866 and 1872, which failed to secure in those years the assent of the House of Lords.' [6]

How untrue this is we may learn from Mr. Shaw Lefevre[7] himself:—

[1] 8 & 9 Vict. cap. 118, sects. 30 and 31.
[2] Hansard's *Parl. Debates*, third series, vol. ccxii. 489.
[3] 12. 'Contents,' 53, 'Not Contents' 65; *Ibid.* vol. ccxii. 1869.
[4] See the speeches of Lord Cairns and Lord Redesdale. *Ibid.* 1866, 1867. [5] See Mr. Bruce's reply, *Ibid.* vol. ccxvi. 433.
[6] *Fifty Years of the House of Lords*, p. 62.
[7] *English Commons and Forests*, chap. xv. pp. 278, 279.

'In 1876 the Home Secretary, Mr. Cross'—(now Lord Cross)—'introduced a measure for amending the Inclosure Act of 1845. In many important respects it fell behind the bill of 1871, especially in the requirement of allotments for public purposes. It left the question of the quantum of allotments to the discretion of the commissioners. It did not extend the Metropolitan Commons Act to other commons near towns.'

These are the precise provisions to which the Lords objected in the former measures!

There was no 'restoration'—'tardy' or otherwise—of these provisions in the Commons Bill of Mr. Cross in 1876.

There were numerous divisions on the bill in the House of Commons, but not a single division took place in the House of Lords.

That the measure, although it did not satisfy Mr. Shaw Lefevre, reflected credit on Mr. Cross is evident from the language of the 'Annual Register' for 1876[1]:—

'It may fairly be said of this act that it protects the vested interests of the lord of the manor and the rights of the commoner; but, above all, it will prevent, most effectually, the [private] appropriation of any open space, which can be used for the health or recreation of the public.'

The Artisans and Labourers Act, 1868 (31 & 32 *Vict. cap.* 130)

'The bill of Mr. Torrens, after being thrice passed by the House of Commons, was, in 1868, emasculated by a select committee of the House of Lords, until it lost all vigour and vitality.'[2]

The Attorney-General,[3] when the bill of Mr. McCullagh Torrens was under consideration, as amended, said[4]:—

'Having spent some time in the examination of the bill, I have come to the conclusion that its provisions are unworkable.'

Here was just the opportunity for the House of Lords, as a revising chamber, to step in.

[1] P. 53 ('History').
[2] *Fifty Years of the House of Lords*, p. 62.
[3] Sir J. B. Karslake.
[4] Hansard's *Parl. Debates*, third series, vol. cxci. 1565.

The view of the author of 'Fifty Years of the House of Lords' is in flat contradiction of the views of the late Earl of Shaftesbury, the best friend the working classes ever had. Speaking on the second reading of the bill in the House of Lords, the Earl of Shaftesbury said [1]:—

'The bill is open to many objections, no doubt; but they are not of such a character that they cannot be removed in committee. I am anxious that it should be considered by a select committee, who may be able to make such alterations as will render it a better working measure.'

When the bill was reported, as amended by the select committee of the House of Lords, the Earl of Shaftesbury said [2]:—

'I quite agree that the alterations effected in the bill by the committee are good ones; and I desire to express my thanks to the two noble and learned ex-chancellors,[3] for the time and attention they have given to the measure in the select committee. I feel assured that, if the House of Commons accepts the bill, it will produce very beneficial results. What has been done with it in your lordships' House will show the country that *your lordships are always ready to do what is for the benefit of the working classes.*'

The House of Commons accepted the Lords' amendments; and the bill became law.

Sir Ughtred Kay Shuttleworth, when calling attention to the dwellings of working people in London, in 1874, said [4]:—

'The act passed by my hon. friend, the member for Finsbury (Mr. McCullagh Torrens) in 1868 has been of great value. Indeed, I did not fully realise its value until the other day, when I went through the parish of St. Giles's, where Dr. Ross, the medical officer of the vestry, has put the act in force, with considerable vigour and courage. The act has been also employed, with effect, in Marylebone, Clerkenwell,

[1] Hansard's *Parl. Debates*, third series, vol. cxcii. 908, 909.
[2] *Ibid.* vol. cxciii. 987, 988.
[3] Lord Westbury and Lord Chelmsford (who had charge of the bill in the Lords). [4] Hansard's *Parl. Debates*, third series, vol. ccxviii. 1951.

Islington, Holborn, St. Luke's, Whitechapel, Mile End New Town, and other parishes.'

The Artisans and Labourers' Dwellings Improvement Act, 1875
(38 & 39 *Vict. cap.* 36)

'Seven years later the Conservative government picked up these eliminated provisions of Mr. Torrens's bill, added a few fresh clauses, and labelled the whole "The Artisans' Dwellings Bill." They were accepted, without protest, by the Peers, and the measure took a prominent place in the list of those which proved the philanthropic zeal of a Conservative government.'[1]

On the point in Mr. McCullagh Torrens's bill of 1868 to which the Lords chiefly objected, Mr. Cross, in 1875, was entirely at one with them:—'We have arrived at the opinion expressed in the bill,' he said,[2] 'that the corporations themselves should not be the builders of the houses; that they ought not to be building speculators.' 'The local authority shall not themselves undertake the rebuilding of the houses.' Such is the language of section 9 of the act of 1875.

The late Lord Chelmsford, who had charge of Mr. McCullagh Torrens's bill in the House of Lords, in explaining the alterations made in it by the select committee of that House, which he thought had effected very great improvement in it,[3] said that 'they had introduced a provision to confine the operations of the local authority to either such demolition or such building as ought to be done by the owner, at the same time *making the owner responsible for the cost.*'[4]

Now I wish particularly to call attention to the italicised words. It was insinuated[5] that the Lords, as the great property owners of London, would manipulate the bill to their own advantage. But here we have the select committee of the Lords actually striking out a provision for compensating

[1] *Fifty Years of the House of Lords*, p. 62.
[2] Hansard's *Parl. Debates*, third series, vol. ccxxii. 109.
[3] *Ibid.* vol. cxciii. 987.
[4] *Ibid.* 986. Lord Portman said he 'thought it was right to have struck out the clauses for giving powers to building companies to speculate through the aid of vestries.' *Ibid.* 987.
[5] See *Ibid.* vol. cxcii. 906, 946.

the owners of houses unfit for human habitation, making the owners responsible for the cost of rebuilding! A more democratic amendment it would be impossible to conceive. I quite admit that the Conservative government 'picked up' the idea of 'compensation' from Mr. McCullagh Torrens's bill, as originally introduced, and elaborated it in great detail.[1]

But, surely, a Radical like the author of 'Fifty Years of the House of Lords' ought to rejoice that 'the great property owners of London' had the courage and self-denial to throw the cost, not only of demolition, but of rebuilding, on the owners, instead of saddling the unhappy ratepayers with them.

The Married Women's Property Act, 1870 (33 & 34 *Vict. cap.* 93)

'In 1870 the House of Lords remodelled Mr. Russell Gurney's Married Woman's Property Bill so as to leave the old law of forfeiture on marriage intact, while providing for some of the more objectionable abuses to which it gave rise.'[2]

This was a subject on which it was of vital importance to proceed tentatively, and not upset, in a moment, the principles which had prevailed for centuries. The chief opponents of the bill were the great Liberal lawyers in the House of Lords. Lord Westbury[3] said[4]:—'The bill seems to have sprung from the sensationalism of the day, which delights in extravagances, and seeks to carry them into the amendment of the law. The bill is, in fact, an entire subversion of the system of domestic rule which has prevailed in this country for more than 1,000 years.'

Lord Penzance[5] said, in effect, that, so far as the utter separation of property could bring about that result, it was a bill to separate husband and wife.[6]

The Lord Chancellor, in Mr. Gladstone's first administration,[7] said that[8] he 'held for himself to the old-fashioned notion that the head of the family must be the husband.'

[1] See especially the schedule to the act of 1875.
[2] *Fifty Years of the House of Lords*, pp. 56, 57.
[3] Lord Chancellor in Viscount Palmerston's ministry, 1861.
[4] Hansard's *Parl. Debates*, third series, vol. ccii. 606, 607.
[5] Created a peer in 1869, on the recommendation of Mr. Gladstone.
[6] *Ibid.* 603. [7] Lord Hatherley.
[8] Hansard's *Parl. Debates*, third series, vol. cii. 617.

Against these 'old-fashioned notions' of Liberal law lords must be set the fact that this 'progressive' bill was in charge of two eminent Conservative lawyers, the Right Hon. Russell Gurney and Earl Cairns! But, joking apart, the House of Lords made ample amends for remodelling this measure by themselves originating and passing unanimously, in 1882, a bill [1] which enacted the very provisions which the Liberal law lords objected to so strongly in 1870; and Earl Cairns was there to support it. The legal profession, and, indeed, public opinion generally, had become familiarised with the new doctrine that marriage should have no effect on the property of the wife, who should be treated in all respects as if she were a *feme sole*.

The opposition to the change came in 1882 from Liberal M.P.s, who vainly tried to destroy the measure when it came down from the House of Lords.[2]

If Mr. Russell Gurney had been a furious Radical he would have moved, in 1870, to 'disagree' with the Lords' amendments; but, being a moderate Conservative, he took the wise and statesmanlike course of moving to 'agree' with them. 'I fully and gratefully admit,' he said, 'that, so far as relates to the working classes, who form the most numerous and most helpless class of the sufferers under the present law, the bill in its present shape affords real, though not complete, relief. I must, however, say,' he added, prophetically, 'that legislation on this subject cannot end with this bill. Principles are admitted in this bill which must lead to a fuller and more complete measure.' [3] And they did.

The Criminal Law Amendment (Violence and Threats, &c.) Act, 1871
(34 & 35 *Vict. cap.* 32)

'The clause in the Criminal Law Amendment Act which the workman most keenly resented—that making picketing a penal offence, was introduced by the Lords. The Commons

[1] 45 & 46 Vict. cap. 75 (see also the 37 & 38 Vict. cap. 50).
[2] Hansard's *Parl. Debates*, third series, vol. cclxx. 615, 616; vol cclxxiii. 1603.
[3] *Ibid.* vol. cciii. 1488.

reluctantly assented on account of the lateness of the session to accept the amendment.' [1]

The most cursory glance at the debates on this measure will show that this statement is a tissue of untruths—and most malicious untruths—coined for the purpose of damaging the House of Lords in the eyes of the working classes connected with trades-unions.

In introducing the bill Mr. Bruce [2] (home secretary in Mr. Gladstone's first administration) said [3]:—

'We propose that a person shall be deemed a molester or obstructor of another person in any of the following cases:—If he persistently follow such person about from place to place; if he hide the tools used by such person; if he [with two or more other persons] watch or beset the house or other place where such person resides or works or happens to be; or if he follow such person persistently about the street.'

Let anyone compare this statement of the Home Secretary with the latter part of section 1 of the enactment, and he will find that section 1 of the enactment contains (almost word for word) these very provisions, except that the words 'with two or more other persons' come lower down in section 1 of the enactment than in Mr. Bruce's statement.

This clearly made 'picketing a penal offence'; and the Earl of Morley, when moving the second reading of the measure in the House of Lords, said [4]:—'Molestation included those acts which were generally understood by the terms "dogging," "rattening," and "picketing"; and he admitted that the bill "prohibited pickets."'

The only question between the government and the House of Lords was whether the words 'with two or more other persons' should immediately precede the words 'watch or beset the house or other place where such person resides or works or happens to be.'

Earl Cairns, in committee on the bill in the House of Lords, moved to shift the position of the words 'with two or

[1] *Fifty Years of the House of Lords*, pp. 60, 61.
[2] Now Lord Aberdare.
[3] Hansard's *Parl. Debates*, third series, vol. cciv. 257, 265.
[4] *Ibid.* vol. ccv. 1920.

more other persons' from the earlier to the latter part of the clause, so that the clause would read as it appears now:—'If [with two or more other persons] he follow such persons.' 'Picketing,' he said, 'could be done by *one* person.'[1]

The amendment was agreed to *nem. con.*

When the Lords' amendment was considered in the House of Commons—by no means at a late period of the session, June 20—it was unanimously agreed to; and so satisfied were the Commons with it, that they negatived, by a majority of 80,[2] an attempt, on the part of Mr. Bruce, to amend it.

The Conspiracy and Protection of Property Act, 1875 (38 & 39 *Vict. cap.* 86[3])

'In 1875, Sir Richard Cross,[4] with the assent of the Lords, repealed the Criminal Law Amendment Act, loudly congratulating the workmen upon the fact that, at last, there was a government in power which would not hesitate to remove the grievances of which they complained. The fact that the Conservative government had done little more than undo the mischief which the House of Lords, with the hearty assent of the Conservatives in the Commons, had done in the previous parliament was studiously kept out of sight.'[5]

We have seen that the House of Commons were unanimous in approving of the Lords' amendment to the Criminal Law Amendment (Molestation, Threats, &c.) Bill, in 1871.

Although the Conspiracy and Protection of Property Act, 1875, repealed the Criminal Law Amendment (Violence, Threats, &c.) Act, 1871, it re-enacted the provisions of that act relative to picketing, incorporating in the act of 1875 the Lords' amendment to the act of 1871. In order to see that this is so, it is only necessary to compare the language of section 7 of the act of 1875 with the language of section 1 of the act of 1871.

[1] Hansard's *Parl. Debates*, vol. ccvi. 778–782.
[2] 'Ayes' 97, 'Noes' 147; *Ibid.* vol. ccvii. 988.
[3] See sect. 17, and the 34 & 35 Vict. cap. 32, repealed thereby.
[4] Now Viscount Cross.
[5] *Fifty Years of the House of Lords*, p. 61.

The Lords' amendment practically affirmed that *one* man could do picketing; it was not necessary, as Mr. Bruce proposed, that 'two or more other persons' should be associated with him to make it an offence. The first section of the act of 1871, as amended by the Lords, reads[1] as follows: 'If *he* watch or beset the house or other place where such person resides or works or carries on business, or happens to be, or the approach to such house or place.'

The 7th section of the act of 1875 says:—

'Every *person* who watches or besets the house or other place where such person resides or works or carries on business, or happens to be, or the approach to such house or place.'

No attempt was made by Mr. Cross in 1875 to 'undo the mischief (?) which the House of Lords, with the hearty assent of the Conservatives in the Commons, had done in the previous session,' namely, the omission of the words, in Mr. Bruce's bill, 'with two or more other persons,' before the words 'watch or beset'; and the House of Commons made no attempt in 1875 to reinsert the words which the Lords left out in 1871.

Is it not a monstrous thing that, in the face of these facts, the author of 'Fifty Years of the House of Lords' should say,[1] 'In the legislation of last parliament'—(1874-1880)—'upon which the Conservative government specially prided itself, on account of its benevolence to the working-man, much was little else than the repeal of the Lords' amendments in previous parliaments. Notably was this the case with the Criminal Law Amendment Act.'

Speaking of the 7th section of the act of 1875, Mr. Cross said[2]:—'This clause is simply intended to put into fresh language the words of the Criminal Law Amendment Act. I shall never shrink from the provisions laid down in that act.'

In some respects the 7th section of the act of 1875 was more stringent than the 1st section of the act of 1871. Intimidation of a workman's 'wife or children' was made

[1] P. 60. [2] Hansard's *Parl. Debates*, third series, vol. ccxxvi. 716

penal by the act of 1875, as well as intimidation of the workman himself. But the severity of the law was mitigated in 1875 by a Lords' amendment. Picketing, in a criminal sense, was declared not to include 'attending at or near the house or place where a person resides or works or carries on business, or happens to be, or the approach to such house or place, *in order merely to obtain or communicate information.*' [1]

In the clause, as it was presented to the House of Commons, this provision does not appear.[2] The provision was inserted by Earl Cairns (lord chancellor in Mr. Disraeli's administration) in committee in the House of Lords.[3]

The great boon, however, which the act of 1875 conferred upon the working classes was contained in the 3rd section:—

'An agreement or combination by two or more persons to do, or procure to be done, any act in contemplation or furtherance of *a trade dispute* between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime.' This was rendered necessary on account of the inadequacy of the provision in the act of 1871 [4] to protect working-men, who merely *struck* for an increase of wages, from being convicted of conspiracy at common law.

The late Mr. Macdonald, a prominent trades-unionist, thanked Mr. Cross [5] very heartily for the amendment of the law of conspiracy, and Mr. Burt also thanked him, in effusive terms, for the Employers and Workmen's Act [6] which the Conservative government succeeded in carrying in the same session.[7] The 'Annual Register' for 1875 [8] takes note that these 'accredited representatives of the artisans' 'expressed gratitude' to Mr. Cross.

[1] 38 & 39 Vict. cap. 86, s. 7.
[2] See Hansard's *Parl. Debates*, third series, vol. ccxxv. 1580.
[3] *Ibid.* vol. ccxxvi. 165, 166.
[4] See per Earl Cairns, C. *Ibid.* 37; and see sect. 1 of that act, *sub fin.*
[5] Hansard's *Parl. Debates*, third series, vol. ccxxv. 1582.
[6] 38 & 39 Vict. cap. 90.
[7] Hansard's *Parl. Debates*, third series, vol. ccxxv. 680.
[8] P. 45 ('History').

The Regulation of the Forces Act, 1871
(34 & 35 *Vict. cap.* 86)
The Royal Warrant

'Army purchase,' says Mr. Spalding, 'defeated.'[1]

With regard to the discussion in the Lords on the Regulation of the Forces Bill, the 'Annual Register' for 1871 says[2]:—

'The Peers rose above the Commons in the width of the considerations which they expressed, and the same high tone was preserved throughout the debate.'

'Purchase in the army' was a mere excrescence—a mere 'abuse'—but a tolerated abuse.

The situation was accurately portrayed by the Earl of Derby[3] in a speech of great lucidity[4]:—'Is it quite certain that our consent is, in strict law, required to the proposal contained in this Bill? I do not speak without the sanction of high legal authority, and, legally, I believe our consent is not necessary. Purchase does not rest on any act of parliament, and it can be abolished without an act, the abolition can be effected by a royal warrant.'[5]

This speech was made on July 14, 1871; on July 20 the royal warrant appeared, abolishing purchase in the army! The issuing of this royal warrant has been severely condemned as 'an unconstitutional exercise of the royal prerogative'; 'but both Lord Granville and Mr. Gladstone were careful to explain,' says the 'Annual Register,'[6] 'that the Queen had acted, not in the exercise of prerogative, but in virtue of a statutory power conferred by an act of George III.'

By the statute 49 George III. cap. 126, the buying or selling of a 'commission' was made a misdemeanour, with this

[1] *The House of Lords; a Retrospect and a Forecast*, appendix, p. 267; see also pp. 191–193, and 263; and *Fifty Years of the House of Lords*, p. 58.

[2] P. 74.

[3] The son of 'the Rupert of debate.'

[4] Hansard's *Parl. Debates*, third series, vol. ccvii. 1724.

[5] The Earl of Derby knew what he was speaking about, as he had been a member of the Royal Commission which sat in the year 1857 on the subject of purchase in the army.

[6] P. 77 ('History'). The royal warrant will be found in the *Annual Register* for 1871, p. 304 ('Chronicle').

proviso (sect. 7) that 'nothing in the act contained should extend to any purchases or sales of commissions for such prices as should be fixed by any regulation to be made by his Majesty in that behalf.'

The system, as is well known, of 'over-regulation prices' sprang up. 'The government,' said Mr. Gladstone, when announcing[1] the abolition of purchase by royal warrant, 'have resolved to advise Her Majesty to take the decisive step of cancelling the royal warrant under which purchase is legal. A new warrant has been framed conformable to the law. By statute it is enacted that any such description of purchase as it may please Her Majesty to allow by royal warrant shall be legal.[2] Under that statutory power the Queen was authorised to permit purchase, and under that statutory power she was also empowered to decline to authorise purchase.'[3]

The House of Lords, which had previously passed no resolution against the abolition of purchase,[4] now read the bill a second time without a division.[5] When the bill came back to the Commons an amusing scene occurred, which is thus described by the 'Annual Register'[6]:—'An unfortunate difference of opinion between the law advisers of the Crown did not improve the position of the government. The Solicitor-General[7] committed himself to a rash and sweeping declaration that the control of the army was absolutely vested in the Crown, and disavowed the plea of statutory power which Lord Granville and Mr. Gladstone had put forward. The Attorney-General,[8] in his turn, disavowed his colleague, and recurred to the original ground of argument, whereupon Mr. Harcourt,[9] amid much laughter, asked the government, in Newmarket phrase, to declare which horse they meant to win with—the Attorney-General on "Statute," or the Solicitor-General on

[1] In the House of Commons, Hansard's *Parl. Debates*, third series, vol. ccviii. 18. [2] *Ibid.* 17. [3] *Ibid.* 1688.

[4] 'This House is unwilling to assent to a second reading of this bill, *until* it has laid before it a complete and comprehensive scheme.' *Ibid.* vol. ccvii. 1581. [5] *Ibid.* vol. ccviii. 542.

[6] P. 82 ('History'). [7] Sir John Coleridge.

[8] Sir Robert Collier. [9] Now Sir William Vernon Harcourt.

"Prerogative"? "I cannot," he added, "explain why the procedure by warrant has not been taken from the beginning."'

The 'Annual Register'[1] informs us that, 'not only the leading Conservative, but the leading Liberal journals, expressed utter disapproval of the royal warrant.'

The Rating (Liability and Value) Bill, 1873

'Sometimes the Lords interposed a peremptory veto upon a necessary measure for the reform of local taxation, as in 1873, when they rejected the Rating Act'[2] (*sic*).

'Rating (liability and value) passed by the Commons, rejected by the Lords.'[3]

The lateness of the period of the session at which it came before them was relied upon as one ground on which the peers ought not to pass the second reading of this bill.[4] The second reading was moved by the Earl of Kimberley, only eleven days before the prorogation of parliament. Another ground was stated by the Marquess of Salisbury:—

'The measure,' said the Marquess of Salisbury,[5] 'has been so altered, clipped and "transmogrified" in its progress through the House of Commons, that it is next to impossible for any one, not actually present at, and listening carefully to, the discussions, to know what has been done.'

Another ground of objection was 'the piecemeal' character of the bill.[6] The author of 'Fifty Years of the House of Lords' gives it a somewhat ambitious name—'a necessary measure for the reform of local taxation.' This is a somewhat magniloquent expression for a small bill like this. 'Its object,' said the Earl of Kimberley,[7] 'is to extend the liability to rating to certain kinds of property not hitherto rated.' He afterwards called it[8] 'a small part of a large subject.'

[1] For 1871, p. 77 ('History').
[2] *Fifty Years of the House of Lords*, p. 52.
[3] *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, LL.B., pp. 263, 267.
[4] See the speeches of Lord Henniker, the Marquess of Salisbury, and the Duke of Richmond, Hansard's *Parl. Debates*, third series, vol. ccxvii. 983, 985, 989, 990.
[5] *Ibid.* 988.
[6] *Ibid.* 984, 989.
[7] *Ibid.* 973.
[8] *Ibid.* 977.

But the principal reason for rejecting the bill, on the second reading, was mentioned by Lord Henniker, when moving its rejection,[1] and was summed up tersely by the Marquess of Salisbury[2]:—

'It is full of conditions and obligations to which we object; but which, if we attempt to amend them, would land us in the middle of a squabble on the question of privilege.'

There is no point on which the House of Commons feels more keenly than the question of the right of the Lords to alter the incidence of taxation. 'Reject the bill entirely, if you like; but don't attempt to amend it. If you do, we shall treat it as a breach of privilege, and "lay" your amendments "aside."'[3]

The Ground Game Act, 1880
(43 & 44 *Vict. cap.* 47)

In 1872 the committee on the game laws reported that, in their opinion, 'the existence of a large number of hares and rabbits upon an arable farm is most prejudicial to its profitable occupation; and they are satisfied that no means so efficient for procuring protection from loss can be devised as the concession to the tenant of the power to kill the ground game upon his farm, *either exclusively or concurrently* with his landlord.'

'Ground game in 1880, against the efforts of the Peers, was declared by the House of Commons to be the inalienable property of the tenant.'[4] The allusion is to the 43 & 44 Vict. cap. 47, the Ground Game Act, 1880.

The Earl of Kimberley, when moving the second reading in the House of Lords, said[5]:—'In England and Ireland, the right to kill game belongs, *prima facie*, to the occupier of the land. At the same time, it is provided, by the act of 1831, that the owner of the land may reserve the right to kill game. Hence the present grievance arose. The only mode of applying a satisfactory remedy to the grievance is to deal with that

[1] Hansard's *Parl. Debates*, third series, vol. ccxvii. 984. [2] *Ibid.* 989.
[3] See May's *Parliamentary Practice*, 10th edit. chap. xxii. p. 542.
[4] *Fifty Years of the House of Lords*, p. 14.
[5] Hansard's *Parl. Debates*, third series, vol. cclvi. 609.

particular reservation, and to attach to it some new condition. The condition we propose to apply is that, in future, the tenant shall possess a *concurrent* right, inseparable from the possession of the land, to kill ground game.' How literally this was carried out will be seen on a perusal of section 1:—'Every occupier of land shall have, as incident to and inseparable from his occupation of the land, a right to kill and take ground game thereon, *concurrently* with any other person who may be entitled to kill and take ground game on the same land.'

This concurrent right is stated in section 3 to be 'inalienable'; but how far this falls short of the grandiloquent phrase of the author of 'Fifty Years of the House of Lords'—'Ground game was declared to be the inalienable property of the tenant!' The word 'exclusive' is intended by this writer to be borrowed from the report, and inserted by the reader before the word 'property,' the landlord being ousted from any share in this 'property.'

The Earl of Beaconsfield said:—'The occasion is not a wise, or a worthy one, to resist the opinion of the House of Commons.'[1]

The Duke of Argyll, lord privy seal in Mr. Gladstone's government, said[2]:—'The wisdom of the noble earl opposite who leads the Conservative party will, I think, be recognised by the country.'

The result of Lord Beaconsfield's advice to the Peers was that the second reading of the bill was carried by a majority of 48.[3]

The Allotments Extension Bill, 1874

'The labourers have been even worse treated than the farmers. The struggle of the labourers for their legal rights to rent local charity lands for their own cultivation has to this day been thwarted by the Lords. The Tories defeated the bill in the House of Commons in 1874.'[4]

[1] Hansard's *Parl. Debates*, third series, vol. cclvi. 620.
[2] *Ibid.* 625.
[3] 68 to 20. *Ibid.* 635.
[4] *Fifty Years of the House of Lords*, p. 14.

There is no record of the wicked 'Tories' defeating this bill! Hansard's 'Parliamentary Debates' and Ross's 'Parliamentary Record' are alike quite reticent with regard to it.

The Allotments Extension Bill of 1874 was introduced in silence, on April 22 in that year, by Sir Charles Dilke, who contented himself with raising his hat; it was read a first time, in silence, and it was mysteriously withdrawn in silence.[1]

The Allotments Extension Act, 1882 (45 & 46 *Vict. cap.* 80)

'In 1882, when the bill went up to the Lords, the Peers rendered it almost a dead letter by insisting that, in all cases appeal should be made, not to the county court, which was near, cheap, and just, but to the Charity Commission, which is in London, and therefore costly, and, it is to be feared, by no means impartial, as between the trustees and their labourers. This is but a small thing, but it is significant.'[2]

The alteration in the bill was made by Mr. Gladstone's own chancellor.[3]

'The tenth clause,' he said, 'proposes a roundabout course of jurisdiction between the charity commissioners and the county courts. I would give the power either to one or the other of those jurisdictions, and by preference to the charity commissioners.'[4] The bill might thus be 'reduced to an acceptable form.'

If anyone will take the trouble of comparing clause 10 of the measure, as amended in committee in the House of Commons,[5] with section 10 of the Allotments Extension Act, 1882,[6] which embodies the Lords' amendments, he will see, at a glance, that all the 'tall talk' about a county court being 'near, cheap, and just,' and the Charity Commission being 'in London, and by no means impartial,' is sheer buncombe.

Under clause 10, as sent up to the Lords, the application

[1] On June 15, 1874. See Hansard's *Parl. Debates*, third series, vol. ccxviii. 979, 980, and vol. ccxix. 1583; also Ross's *Parliamentary Record* for 1874, p. 59. [2] *Fifty Years of the House of Lords*, p. 14.
[3] The Earl of Selborne.
[4] Hansard's *Parl. Debates*, third series, vol. cclxxiii. 1671–2.
[5] *Ibid.* 884. [6] 45 & 46 Vict. cap. 80.

of the aggrieved cottagers, or labourers, was to be made, not to the local county court, but to the charity commissioners, who were to 'send a certificate to the county court judge,' who was to 'issue his order for remedying, in manner specified in the certificate,' the grievance complained of. Clearly, the county court judge was to act in an executive, not a judicial, capacity.

In the 11th section, embodying the Lords' amendments, the application was still to be made to the charity commissioners, but they were themselves to 'issue their order' for remedying the grievance complained of—a much simpler and more rational process.

The Friendly Societies Act, 1875 (38 & 39 *Vict. cap.* 60)

By section 28 of this act, which was due to a Conservative government, 'No society shall insure or pay on the death of a child under five years of age any sum of money which, added to any amount payable on the death of such child by any other society, exceeds 6*l.*'

The mind of Sir Stafford Northcote, Mr. Disraeli's chancellor of the exchequer, was, as he himself admitted, in a state of considerable uncertainty as to the proper limit to be adopted with regard to child-insurance.

In the bill of 1874 there was a clause, based on the recommendation of a Royal Commission, to the effect that the life of an infant under three years old was not insurable. No such provision was contained in the bill of 1875; but there was a provision limiting the amount for which the life of an infant should be insurable to 3*l.* The Chancellor of the Exchequer first accepted an amendment raising the amount to 5*l.*, and then to 6*l.*, and as the bill stood when it went up to the Lords, the life of a baby one day old might be insured for 6*l.*![1]

The amendment to restore the bill to its original shape, by substituting 3*l.* for 6*l.*, was moved by a former home secretary of Mr. Gladstone—Lord Aberdare[2] (formerly Mr.

[1] Hansard's *Parl. Debates*, third series, vol. ccxxv. 310. The amendment incorporated in sect. 28 was moved by Mr. Hopwood in committee. *Ibid.* vol. ccxxiv. 1405.

[2] *Ibid.* vol. ccxxv .1469.

Bruce). Lord Aberdare's amendment was supported by two Liberal peers,[1] and opposed by two Conservative ones;[2] and was carried by a small majority,[3] although the House of Lords is supposed to be 'a Tory institution!'

On this the author of 'Fifty Years of the House of Lords' treats us to the following reflections[4]:—

'The chief contribution of the Peers to friendly society legislation was the reduction of the maximum amount, for which a child's life might be insured, from 6*l.* to 3*l.*, but as it was disagreed with by the Commons, their attempt to lessen the temptation to parents to murder their children ended in failure.'

Lord Henniker, although he opposed Lord Aberdare's amendment, said:—'Of course the noble lord opposite' (Lord Aberdare) 'had no intention of accusing the working class of child-murder.'[5] The author of 'Fifty Years of the House of Lords' seems, covertly, to insinuate that Mr. Gladstone's former home secretary did so accuse them.

It was the Conservative chancellor of the exchequer, Sir Stafford Northcote, who moved to disagree with the Lords' amendment,[6] and a Liberal who supported it.[7]

Lord Aberdare's argument was that 'the sum ought to be one which would cover the legitimate expenses of the funeral, and leave no margin.'[8] He referred to the report of my select committee on 'the protection of infant life,'[9] to show that the amount of actual criminal destruction was very small indeed, in comparison with the non-criminal destruction, 'through negligence.'[10]

The Merchant Shipping Act, 1871 (34 & 35 *Vict. cap.* 110)

The House of Lords passed this bill unanimously.

Amongst other things, it made it a misdemeanour for any

[1] The Earl of Morley and Earl Fortescue.
[2] Earl Beauchamp and Lord Henniker.
[3] 'Contents' 37, 'Not Contents' 41. Hansard's *Parl. Debates*, third series, vol. cxxv. 1472.
[4] P. 63.
[5] Hansard's *Parl. Debates*, third series, vol. ccxxv. 1472.
[6] *Ibi* . vol. ccxxvi. 290.
[7] *Ibid.* Mr. A. H. Brown.
[8] *Ibid.* vol. ccxxv. 1130.
[9] See *ibid.* vol. ccvi. 320.
[10] *Ibid.* vol. ccxxv. 1470.

person to send a ship in an unseaworthy state to sea, so as to endanger the life of any person belonging to her, or on board of her (section 11).

The Merchant Shipping Act, 1873
(*36 & 37 Vict. cap.* 85)

This bill received the unanimous assent of the House of Lords.

It extended the provisions of the act of 1871, and gave power to the Board of Trade to detain a ship if, on being surveyed, she proved to be unseaworthy by reason of the defective condition of her hull, equipments, or machinery, or by reason of overloading or improper loading (section 12), the shipowner being condemned in the cost of the survey (section 13). Dangerous goods, improperly sent, were liable to forfeiture (section 27). The sender of such goods, without written notice, was to be liable to a penalty of 100*l.* (section 23). A false description of such goods rendered the sender liable to a penalty of 500*l.* (section 24).

The Merchant Shipping Act, 1876
(*39 & 40 Vict. cap.* 80)

'In a sitting of half an hour,' says the author of 'Fifty Years of the House of Lords,' 'the peers carried amendments to the Merchant Shipping Bill, overriding the decisions arrived at by the House of Commons after long and patient debate.'[1]

Mr. (now Sir John) Gorst, in the discussion which took place in the House of Commons on the motion for taking the Lords' amendments into consideration, said, 'The amendments in question had not been made by the House of Lords, properly speaking, or even by the government, but by the officials of the Board of Trade—the permanent officials in that department.'[2] In this view Mr. Plimsoll 'concurred.'[3]

One reason, I suppose, why the government yielded to the representations of the 'permanent officials' was that the clauses which the Board of Trade succeeded in amending were

[1] *Fifty Years of the House of Lords*, p. 63.
[2] Hansard's *Parl. Debates*, third series, vol. ccxxxi. 1172.
[3] *Ibid.* vol. ccxxxi. 1173.

not in the bill as originally introduced; and, therefore, the government was not responsible for them. The effect of the action of the Lords was to adopt the clauses inserted in the Commons, with certain modifications.

The act of 1876 [1] provided that in every contract of service, express or implied, between the owner of a ship and any seaman thereof, there shall be implied an obligation on the part of the owner that he, the master, and every agent charged with the loading of the ship, or the preparing of her for sea, or the sending her to sea, 'shall use all reasonable means to ensure the seaworthiness of the ship for the voyage, and keep her in a seaworthy condition' during it.

The 'Annual Register' for 1876 [2] assures us that, 'although all Mr. Plimsoll's suggestions were not accepted, it may fairly be said that our merchant seamen now enjoy efficient and needful protection.'

The Merchant Shipping (Carriage of Grain) Act, 1880 (43 & 44 *Vict. cap.* 43)

I don't know whether the author of 'Fifty Years of the House of Lords' considered it outside the period which his 'small work' covers, but I desire to mention that this measure, which was piloted by Mr. Chamberlain through the House of Commons, received the unanimous approbation of the Peers. It was the outcome of the deliberations of a select committee, appointed at the instance of Mr. Chamberlain, 'to make inquiry concerning the losses of British ships, missing and foundered, since the passing of the Merchant Shipping Act, 1873; to ascertain the causes of those losses; and to report whether any change in the law was required to prevent such losses.'

By section 4 precautions are to be taken on board British ships against the shifting of grain cargoes, laden in port, in the Mediterranean or Black Sea, or on the coast of North America; the principal precaution being that there shall not be carried between the decks, or, if the ship has more than two decks, between the main and upper decks any grain in

[1] 39 & 40 Vict. cap. 80, sect. 5.

[2] P. 52 ('History').

bulk, except such as may be necessary for feeding the cargo in the hold.

The Deceased Wife's Sister's Bill

This bill occupies an important position amongst the measures rejected by the House of Lords in recent years.[1]

Opinions are much divided on this bill. A certain portion of the community has always hailed with satisfaction its rejection by the Lords; and there can be little doubt that, if women had seats in the House of Commons, the bill would be rejected by the people's House also. They do not, as a rule, like the idea of a rival, in the person of a sister, hanging over their death-beds.

There are two things that have had weight, I have no doubt, with the House of Lords: first, the agitation for the alteration of the law is kept up by those who have violated it, deliberately bastardising their offspring. They may go to a foreign country in which such marriages are legal, or even to the colonies, in which they are legal, to get married; but this does not condone the offence against the law of their home domicile.

Secondly, according to the law of England, the tie of affinity is an equal bar to marriage with the tie of consanguinity. Nobody suggests that a woman should have power to marry her deceased husband's brother, the exact counterpart of the marriage with a deceased wife's sister, or that the bar of affinity should be removed in any case except the one; but, to be consistent, the advocates of the Deceased Wife's Sister's Bill, should extend its provisions so as to remove the bar of affinity altogether. If it is right to do this in one case, it must be right to do it in all.

It seems clear to me, on the other hand, that the Old Testament, which enjoins on a surviving brother the duty of wedding the widow of the deceased brother, in order to build up his deceased brother's house, cannot, with any show of reason, be said to condemn such a bill as the Deceased

[1] *Fifty Years of the House of Lords*, p. 56; and see Mr. Spalding's list, pp. 266–8 of his work, *The House of Lords*.

Wife's Sister's Bill. It is entirely a social question; many Liberals, including Scotch members, oppose the bill, and some Conservatives are in favour of it. It is, therefore, ridiculous to adduce the rejection of the bill, so frequently, by the House of Lords, as a reason for considering them a 'Tory institution.'

To show what ignorance exists on this subject I may relate a true anecdote. A *nouveau riche* was speaking out his mind on this subject to a friend of mine, and concluded his remarks as follows:—

'What oi want to knaw is, what disease the *diseased* wife died o'"!

National Education

'The first attempt,' says the author of 'Fifty Years of the House of Lords,'[1] 'to enlist the State in the work of education brought the Peers into the field as its determined opponents. A grant of 30,000*l.* was voted by the Commons by a narrow majority of 2. It was condemned by the Lords by 229 votes to 118. This was the most decisive condemnation they ever pronounced of a system of National Education.'

It can hardly be suggested that the Peers were opposing the national will, when the promoters of the Education Scheme of 1839 could only point to so slender a majority as 2 in the people's House![2] and this a reduced majority; for the majority on the first division was 5![3]

Mr. Gladstone both spoke[4] and voted[5] against the education scheme of Lord Melbourne's Government.

'Since the year 1833,' says the 'Annual Register' for 1839,[6] 'the sum of 20,000*l.* had been annually granted by parliament in furtherance of the great work of national education in this kingdom. The "National Society," and the "British and Foreign School Society," had enjoyed, in equitable proportions, the benefit of this grant. There cannot be much doubt but that any proposition, on the part of the

[1] P. 53.
[2] 'Ayes' 275, 'Noes' 273; Hansard's *Parl. Debates*, third series, vol. xlviii. 793.
[3] 'Ayes' 280, 'Noes' 275. *Ibid.* 681.
[4] *Ibid.* 622–634.
[5] *Ibid.* 684, 796.
[6] P. 140 ('History').

Government, to increase and facilitate the means of education, on the principle thus recognised, would have met with the general concurrence and approbation of all parties in the House of Commons.'

Instead of this, what had the Government proposed to do? To depart, in the most uncalled-for way, from 'the principle thus recognised,' which was fair alike to both churchpeople and dissenters, whom the two great societies respectively represented, and to give an absolute discretion to a political oligarchy, consisting of the lord president of the council and five ministers members of it, as to how the 20,000*l.* and the additional grant of 10,000*l.* should be distributed independently of the control of parliament![1]

Lord Ashley denounced the Government scheme in unmeasured terms:—'It is my firm belief that this plan of national education is hostile to the Constitution, to the Church, and to revealed religion itself.'[2]

Daniel O'Connell rated the Wesleyan Methodists severely for their opposition to the Government scheme. 'I challenge,' he said,[3] 'any gentleman of that persuasion to point to one single instance in their political history which shows them to be the friends of civil and religious liberty.'

The resolution, carried in the House of Lords by a majority of 111,[4] was an extremely mild one. It merely vindicated the right of the House of Lords to have an 'opportunity,' 'as one branch of the legislature,' 'of fully considering a measure of such deep importance to the highest interests of the community.'[5]

The lords spiritual took a prominent part in the discussion. They accurately reflected the views of the clergy, who declined to participate in the proposed grant, 'saddled, as it was, with conditions to which they could not conscientiously give their assent.'[6]

[1] Lord Stanley said that he would not have objected to the scheme, if the new board had been limited to purely *executive* purposes. *Annual Register* for 1839, p. 142.

[2] *Ibid.* p. 146. [3] *Ibid.* p. 154. [4] *Ibid.* p. 171.

[5] *Ibid.* p. 165. [6] *Ibid.* p. 171.

The Elementary Education Act, 1870 (33 & 34 *Vict. cap.* 75)

'When the Education Bill was before them, the Lords contented themselves with striking out the clause permitting school boards, in certain cases, to establish free schools, and with expunging the provisions for the election of school boards by the ballot.'[1]

The fate of the two Lords' amendments was different. The omission of clause 25[2] was carried, on the motion of a Liberal peer,[3] a relative of Mr. Gladstone's, by a very narrow majority, 4.[4] When the Lords' amendments were considered, Mr. Forster said he would propose that this House do 'disagree with the amendment, as it had been carried in the other House by a small majority.' 'Amendment disagreed to.'[5]

The second amendment, 'expunging the election of school boards by ballot,' was supported in the Lords by the Earl of Shaftesbury, who regretted that the mischievous word 'ballot' had been introduced into the Educational Bill.[6] The Lords' amendment was accepted by Mr. Forster, who moved to 'agree' with it.[7] No division took place. The Lords' amendment was unanimously 'agreed to.'[8] The provision for taking the election by ballot was not in the Elementary Education Bill, as originally introduced. It was inserted in committee on the bill, on the motion of Sir Charles Dilke,[9] Mr. Forster did not like it. 'There was inconvenience in having imported into this difficult educational question the question of the Ballot'; [10] nevertheless he voted with Sir Charles Dilke![11]

Endowed Schools

'The opposition of the Lords to the reform of endowed schools was more serious. Under Lord Salisbury's leadership they rejected many of the best schemes of the commissioners

[1] *Fifty Years of the House of Lords*, p. 53.
[2] Now section 26. 'Establishment of Free School in special cases.'
[3] Lord Lyttleton.
[4] 65 to 61. Hansard's *Parl. Debates*, third series, vol. cciii. 1185.
[5] *Ibid.* 1558. [6] *Ibid.* 1192. [7] *Ibid.* 1558. [8] *Ibid.* 1560.
[9] *Ibid.* 271–303. [10] *Ibid.* 271. [11] *Ibid.* 301.

for the reform of our great educational foundations for middle-class education.'[1]

The two principles on which the Endowed Schools Commissioners appear to have acted were:—

(1) Ascertain the founder's wishes, and, having ascertained them, depart from them as widely as you can; and (2) Oust the poor from as many endowments as possible, and give them to 'the middle classes.'

No wonder the House of Lords exercised their constitutional right of addressing the Queen, and advising Her Majesty not to sanction schemes to carry out these principles!

The Endowed Schools Act, 1873
(36 & 37 *Vict. cap.* 87)

The author of 'Fifty Years of the House of Lords'[2] is dissatisfied with the Peers for 'cutting down the duration of the commission from three years to one.'

The Government of Mr. Gladstone, through Lord Lyttleton, a relative of his and one of the commissioners, acquiesced in this limitation.[3]

The Endowed Schools Act, 1874
(37 & 38 *Vict. cap.* 87)

'The Lords cleared the way for the extinction of the commission in the early days of Lord Beaconsfield's administration.'

By the Endowed Schools Act, 1874, the powers and duties of the Endowed Schools Commission were transferred to the Charity Commission, a body now, happily, moribund.

Irish Drainage Bills

I have already dealt with The Drainage of Bogs (Ireland) Bill, 1830,[4] and shown that it was not proceeded with in the House of Lords, owing to the death of King George IV.

The author of 'Fifty Years of the House of Lords' says[5] that 'the fate of that bill was significant of much that was to

[1] *Fifty Years of the House of Lords*, p. 53.
[2] P. 53. See sect. 17, inserted in committee in the Lords. Hansard's *Parl. Debates*, third series, vol. ccxvii. 1418.
[3] See *ibid.* 1316. [4] See Chap. XVIII. *supra*. [5] P. 6.

follow. It was not till 1842 that an act was passed for promoting the arterial drainage of Ireland.'

The mention of 'arterial drainage' is a little unfortunate, as we have it on the authority of Dr. Mountifort Longfield,[1] 'than whom there was no one more capable of giving trustworthy statement on the subject,' that 'almost all the arterial drainage of Ireland and a great part of the subsidiary drainage have been done by the owners of the land.'

By 'much that was to follow' does the author of 'Fifty Years of the House of Lords' mean to insinuate that the House of Lords had been obstructing the drainage of Irish bogs during all the years which elapsed between July 1830 and August 1841? Liberal administrations were in power during the whole of that period;[2] but I cannot find that it ever occurred to Earl Grey or Viscount Melbourne to ask the assent of the House of Lords to an Irish Drainage Bill!

In 1840, no doubt, a Drainage (Ireland) Bill was read a third time in the House of Commons[3]; but it only reached the Lords in time for a formal first reading.[4]

In 1842 a Conservative Government was in power; and then, for the first time, beneficent legislation on this subject was carried to a successful issue. There was obstruction, no doubt, in the House of Lords; but the motion to refer the bill to a select committee was 'negatived,' without a division.[5]

In 1845, while the Conservative Government was still in power, another Drainage (Ireland) Bill was passed,[6] which strengthened the Act of 1842.

'It was not till 1846 that the provisions of the Act of 1842 were effectively applied.'[7] This measure[8] was also carried by the Conservative Government.

Drainage (Ireland) Bills became quite the fashion with Liberal Governments after the Conservative Government had

[1] Cited by Earl Cairns in the debate on the second reading of the Landlord and Tenant (Ireland) Bill, 1870. Hansard's *Parl. Debates*, third series, vol. ccii. 198.
[2] Except for a few months in 1834, 1835.
[3] Hansard's *Parl. Debates*, third series, vol. lv. 1104.
[4] *Ibid.* 1111.
[5] *Ibid.* vol. lxv. 321; 5 & 6 Vict. cap. 89.
[6] 8 & 9 Vict. cap. 69.
[7] P. 6 of *Fifty Years of the House of Lords*
[8] 9 & 10 Vict. cap. 4.

set the example. Thus, in the very next year (1847) the administration of Lord John Russell carried two Drainage (Ireland) Bills,[1] and the Earl of Aberdeen's Government amended the Drainage Acts in 1853.[2]

Compensation for Improvements

It is of vital importance that the reader should understand that there are two distinct kinds of 'compensation'—compensation for improvements and compensation for disturbance. At present we are dealing with compensation for improvements. 'That principle,' said the Marquess of Salisbury in the debate on the second reading of the Landlord and Tenant (Ireland) Bill, 1870,[3] 'I believe to be not only wise, but eminently just. We agree that the tenant is to be fairly compensated for all his outlay on the soil, and that every true custom should be observed.'

'With regard to compensation to be given to the tenant for improvements made by him,' said the Earl of Derby,[4] 'I think the general principle is accepted by both sides of the House.'[5]

'I recollect,' said Earl Cairns, speaking in 1870, 'when I was a very young member of the House of Commons—in 1853—and again in 1855, when Tenants' Compensation Bills were brought before the House—I put upon the notice paper a clause for the purpose of giving retrospective compensation for improvements to tenants.'[6]

The Duke of Richmond, in 1870, cited[7] the evidence of Mr. Trench, the well-known land agent, that 'it was impossible to conceive a more utterly false assertion than that the landlords of Ireland do nothing, and that the tenants do all—till, drain, and make every improvement.'

Earl Cairns mentioned, in the course of the same debates,[8] that 'at the time of the Devon Commission, when the operations of landlords were not so far advanced as they had since

[1] 10 & 11 Vict. cap. 79, and 10 & 11 Vict. cap. 106.
[2] 16 & 17 Vict. cap. 130.
[3] Hansard's *Parl. Debates*, third series, vol. ccii. 75, 79, 80.
[4] Not the great Earl of Derby, the 'Rupert of Debate,' but his son.
[5] Hansard's *Parl. Debates*, third series, vol. ccii. 234. In the debate of 1870.
[6] *Ibid.* 196, 197.
[7] *Ibid.* 974.
[8] *Ibid.* 198, 199.

become, all the buildings upon twenty-two estates, and these some of the largest in the country, were erected at the expense of the landlords.'

The Earl of Devon, however, himself pointed out, in the course of the debate on the Tenants' Compensation (Ireland) Bill, 1845,[1] that landlords could not, 'without submitting to enormous sacrifices,' make the improvements on the very small farms, 'whatever might be their kindly disposition towards their tenants.'

The Earl of Dufferin and Ava, in 1854, in a brilliant speech, said[2]:—'On an estate applotted out to a conglomeration of small farmers, it became simply impossible to follow out the English system; and for the landlord himself to put upon the farm the more enduring improvements, it would have been madness to attempt it. It would have been ruinous for the landlord to erect over every ten or fifteen acres of his property a separate farming establishment.'

It was, therefore, the ordinary practice, in the case of *small* farms, for the tenant to make the improvements.

The Devon Commission reported, in 1845, in favour of compensation for improvements, and the Conservative Government of the day lost no time in introducing a bill to carry out that recommendation.

Lord Stanley admitted[3] that 'the bill was of somewhat an unusual character,' and would involve exceptional legislation for Ireland. The Irish landlords in the House objected to this exceptional legislation,[4] and also to the powers given to a commissioner in Dublin to interfere, 'in the most vexatious manner,' between landlord and tenant, and 'dictate what arrangements should take place' between them.[5] We are familiar with this idea now, but it was a startling novelty in 1845. The Irish landed proprietors were a 'small minority' in the House of Lords, and naturally uttered 'vehement protests' against legislation which they considered 'oppressive.' Notwithstanding these 'vehement protests of the Irish landlords,'

[1] Hansard's *Parl. Debates*, third series, vol. lxxxi. 232.
[2] *Ibid.* vol. cxxxi. 39.
[3] *Ibid.* vol. lxxxi. 211.
[4] *Ibid.* 1123.
[5] *Ibid.* 1116, 1123, 1134, 1135, 1147.

however, the bill was read a second time in the House of Lords by a substantial majority.[1] It was then referred to a select committee, on the motion of Lord Stanley himself.[2]

The author of 'Fifty Years of the House of Lords' deliberately misquotes[3] Lord Stanley's statement in the House of Lords on July 15, 1845:—'On July 15 Lord Stanley abandoned the bill in consequence of the strong feeling manifested against it by the select committee and the House.'

What really occurred was this—Lord Stanley said that at the last meeting of the select committee he stated that, 'seeing the strong feeling manifested both in committee and in the House, it was the intention of the Government to propose various and not unimportant modifications in the measure.' It was 'the great difficulty in engrafting such *amendments* on the bill' which led him to drop it for the session.[4]

'Opportunity was afforded the Peers of reconsidering (!) their position in 1853. In that year Lord Aberdeen's Government adopted a "modification" of the bills of its Conservative predecessor.'[5] The bills of 'its Conservative predecessor' were introduced by the Right Hon. Sir Joseph Napier, attorney-general for Ireland in Lord Derby's administration,[6] afterwards lord chancellor of Ireland.[7] He introduced four bills dealing with Irish land, a kind of code of the law of landlord and tenant. Leave was given to bring in the bills,[8] and they were read a second time[9] and referred to a select committee. Notwithstanding the substitution of a Liberal for a Conservative Government, parliament was only adjourned, not prorogued, on December 28, 1852. The select committee of the House of Commons dealt very freely with the bills, striking out the

[1] 'Contents' 48, 'Not Contents' 34; Hansard's *Parl. Debates*, third series, vol. lxxxi. 1150.

[2] *Ibid.* 1195, 1205. This reference of the bill to a select committee was 'the first of the great crimes against Ireland committed by the House of Lords as a House of Landlords.' Harold Spender, *House of Lords*, p. 14.

[3] P. 7. 'Dropped on account of the Lords' opposition.' Mr. Spalding's *House of Lords*, appendix, p. 259.

[4] Hansard's *Parl. Debates*, third series, vol. lxxxii. 493.

[5] *Fifty Years of the House of Lords*, p. 7.

[6] 1852. M.P. for Dublin University. [7] 1858–9.

[8] November 22, 1852. Hansard's *Parl. Debates*, third series, vol. cxxiii. 305, 348. [9] *Ibid.* 1064.

provisions giving the tenants a right to retrospective compensation for improvements *in* the soil, such as drainage.

It was not till August 2, 1853, that these bills (introduced on November 22, 1852) were sent up to the House of Lords.[1] On August 9, ten days before the end of the session, the Duke of Newcastle (colonial secretary in Lord Aberdeen's Government) moved the second reading. The bills were read a second time without a division.[2]

The Prime Minister (the Earl of Aberdeen) said[3] that 'the bills were substantially the same' as those introduced by Sir Joseph Napier in November 1852. 'If their lordships would consent to the second reading of these bills, he, on the part of Her Majesty's Government, was prepared to promise that at the earliest period of next session the whole subject would be taken into consideration—probably in that House in the first instance.'

Mr. Spalding has fallen into the snare of repeating twice over 'the principal rejections and mutilations of bills by the House of Lords since 1832,' first 'classified according to subjects,'[4] then in 'chronological order.'[5] The two 'tables' occasionally contradict each other. This is the case with what he calls 'The Tenants' Improvements (Ireland) Compensation Bill, 1853.' In Table I. the bill is 'dropped in Lords.'[6] In Table II. the same identical bill is 'rejected'![7] This is really too bad! And not content with saying in Table II. that the Lords 'rejected' this bill, Mr. Spalding says that two other bills,[8] read a second time by the Lords, were 'rejected'!

[1] See Hansard's *Parl. Debates*, third series, vol. cxxix. 1137.

[2] *Ibid.* 1500–1535.

[3] *Ibid.* 1533. The Land Improvement Bill had been read a second time in the House of Lords on April 5, 1853. *Ibid.* vol. cxxv. 590; stood for the third reading. The other bills were 'A Bill to facilitate the making of Beneficial Leases and Agreements for Compensation for Improvements of Land'; 'A Bill to provide Compensation to Tenants for Improvements of their Holdings in Ireland'; and 'A Bill to simplify, consolidate, and amend the existing Laws which regulate the Relation of Landlord and Tenant in Ireland.'

[4] *The House of Lords; a Retrospect and a Forecast*, appendix, pp. 259–264.

[5] *Ibid.* pp. 264–268.

[6] *Ibid.* p. 259.

[7] *Ibid.* pp. 265, 266.

[8] Landlord and Tenant (Ireland) Compensation Bill, and Leasing Powers (Ireland) Bill.

Having exposed some of Mr. Spalding's mistakes, I now turn to his rival.

'In 1854 the Tenants' Compensation Bill, together with three other bills relating to the question of Irish land, was referred to a select committee of the Peers. They disposed of it without hesitation. The Compensation Bill was condemned, and the other bills, which did nothing to protect the tenant in the enjoyment of his property, were sent down to the House of Commons.' [1]

This statement is brimful of mistakes. Eight bills, not four, 'relating to the question of Irish land,' were read a second time without a division, in the House of Lords, and referred to a select committee.[2]

The decision of the House of Lords was come to 'with the full concurrence of the members of [Lord Aberdeen's] Government.' So said Sir Joseph Napier in 1855.[3]

The Lord Privy Seal, who was chairman of the select committee, said[4]:—'The plan adopted by the select committee in respect to two of these bills, the Law of Landlord and Tenant Bill, and the Leasing Powers Bill, was to take these two bills and endeavour to engraft upon them the improvements which were suggested in the other proposed measures. The select committee did not think it necessary, having approved of the bill regarding buildings, to have a separate bill on the subject of roads and fences.'

The Duke of Newcastle, Colonial Secretary, pointed out that 'permanent improvements *on* the soil (such as buildings) are visible and tangible, whereas other improvements (such as drainage) made *in* the soil are invisible and extremely

[1] *Fifty Years of the House of Lords*, p. 8.

[2] 'There were no less than eight bills referred to the Committee.' Speech of the Duke of Argyll, lord privy seal in the Earl of Aberdeen's Government (Hansard's *Parl. Debates*, third series, vol. cxxxiii. 513). These were: The Landlord and Tenant (Ireland) Bill; The Law of Landlord and Tenant (Ireland) Bill; The Law of Landlord and Tenant (Ireland) Consolidation Bill; The Leasing Powers (Ireland) Bill; The Powers of Leasing (Ireland) Bill; The Tenants' Improvements Compensation (Ireland) Bill; Compensation for Tenants' Improvements (Ireland) Bill, and a bill of Lord Dufferin's.

[3] Hansard's *Parl. Debates*, vol. cxxxvii. 1546. See also by Mr. Serjeant Shee, March 2, 1855, *ibid.* 16.

[4] *Ibid.* vol. cxxxiii. 513–517.

difficult to calculate'; and 'were entirely erased,' not by the select committee of the House of Lords, but by the select committee of *the House of Commons!* [1]

Sir Joseph Napier, so far from condemning the conduct of the Lords, eulogised it and censured the Liberal Government for not proceeding with the two bills which he had carried through the House of Commons, and which the House of Lords had passed—the Landlord and Tenant Bill and the Leasing Powers (Ireland) Bill:—'It certainly is most satisfactory to myself,' he said, 'as a matter of personal congratulation, that out of all the bills which had been referred, these two alone should have been selected by the House of Lords to be proceeded with. The House of Lords passed these two bills considering them to contain a fair settlement of the question. And yet the Government now says that the two bills cannot proceed, however valuable they may be, unless the Compensation Bill accompanies them. Is it fair to me to say that if the Tenants' Compensation Bill cannot be passed the whole question shall be thrown overboard and the decision of the House of Lords pronounced to be wrong? The course adopted by the Government will only invite further agitation hereafter, and keep the minds of the tenantry of Ireland in an unquiet state of expectation. That is not just to them, nor honourable and candid to me.' [2]

The Irish Land Act of 1860

'In 1860 a Land Act was passed.' [3] Yes, and it was read a second time in the House of Lords without a division.[4] The author makes an extraordinary statement [5] that 'the bill did nothing to limit the landlord's right to confiscate the interest of his tenant, and that grievance went unredressed.'

[1] Hansard's *Parl. Debates*, third series, vol. cxxxi. 26.

[2] *Ibid.* vol. cxxxv. 164–179 (July 13, 1854). Mr. Disraeli supported the ex-Attorney General for Ireland in a powerful speech. *Ibid.* 203–217.

[3] 23 & 24 Vict. cap. 153. The Landed Property (Ireland) Improvement Act, 1860. *Fifty Years of the House of Lords*, p. 8.

[4] Hansard's *Parl. Debates*, third series, vol. clx. 179. [5] P. 8.

Anyone who peruses the statute—part iii,[1] Tenants' Improvements—will see that this assertion is quite contrary to fact. The definition of 'Tenants' Improvements' is extremely wide, including draining, reclamation of bog-land, making farm roads, irrigation, embankment of land, and erection of buildings for agricultural purposes, suitable to the holding. After notice from the tenant the landlord might, within three months, dissent from the suggested improvement (which might very possibly be a disfigurement to the estate); but if he did not do so, and the tenant made it, so far from the landlord having power to 'confiscate' it, he was left entirely in the hands of the chairman of quarter sessions, who could make an order charging the lands with an annuity for twenty-five years of seven pounds two for every 100*l.* expended;[2] and if the tenant was turned out by the landlord the provisional order for payment of the annuity to the tenant was to be made absolute.

'In 1866 the Liberals, and in 1867 the Conservative Government attempted, but in vain, to secure for the Irish tenants that protection for their property which the Devon Commission had demanded for them in 1845.'[3]

I don't see why the House of Lords should be blamed for the failure of these efforts. In 1866 the Liberal Government, as is their wont, slaughtered their own offspring on the floor of the House of Commons![4] In 1867 the Liberal members obstructed the bill of Earl Derby's Government. When Lord Naas moved that it be read a second time, up jumped Mr. Candlish and moved that 'the debate be now adjourned,'[5] and Mr. Bernal Osborne seconded him. Mr. Gregory (an Irish member) moved, when the debate was resumed,[6] that, 'without prejudging the second reading of the bill, this House is of opinion that no enactment for the settlement of the landlord and tenant question in Ireland can be deemed satisfactory which does not provide for the encouragement of leases.'

[1] Sects. 33–52.

[2] The value of the labour of the tenant and his family was to be taken into account, sect. 44. [3] *Fifty Years of the House of Lords*, p. 9.

[4] Hansard's *Parl. Debates*, third series, vol. clxxxiv. 1489.

[5] *Ibid.* vol. clxxxvi. 1159. [6] *Ibid.* 1726.

A well-known Irish Conservative member (the late Lord Claud Hamilton, uncle of the present Duke of Abercorn) was indignant at this obstruction :—

'When the Government proposed to deal with this definite question—compensation—hon. members objected, because the bill would not do what it did not profess to do. If those hon. members did not like the principle of compensation, why did they not say so? He himself did approve of the principle, therefore he supported the bill. He appealed to the House whether they would allow Irish questions to be frittered away in the mode which was now attempted by those who supported the amendment, which, if carried, would work nothing but the postponement, and possibly the entire defeat, of this measure for the present session.'[1]

This bill was a distinct advance on the Land Act of 1860, as it enabled the tenant to obtain compensation for improvements *in* the soil (such as drainage), reclamation of waste lands, clearing the land of stones, and removal of old and useless fences, without the consent of the landlord.[2] Lord Naas (afterwards Earl of Mayo), Chief Secretary for Ireland, struggled manfully against the obstructive tactics of the Liberal members, but in vain. The bill had to be withdrawn.

The Irish Land Act of 1870[3]

'In 1870,' says the author of 'Fifty Years of the House of Lords,'[4] 'the necessity for some legislation was admitted by the Peers, for they read the Land Bill without a division on June 17, 1870.'[5]

Earl Granville, in moving the second reading of the Irish Land Bill in the House of Lords, said[6] that 'the rent of land in Ireland is lower, considering the capability of the soil, than that of any civilised country in Europe,' that 'the interest of money lent on mortgage is higher,' and that 'the usual number of years' purchase is about one-third less' than in England.

[1] Hansard's *Parl. Debates*, third series, vol. clxxxvi. 1763.
[2] *Ibid.* vol. clxxxv. 537–540. [3] 33 & 34 Vict. cap. 46. [4] P. 9.
[5] Hansard's *Parl. Debates*, third series, vol. ccii. 381.
[6] *Ibid.* 5 (June 14, 1870).

'The late Earl of Derby [1] told your lordships last year that, forty years before, he took the management of the family estates in Ireland; and that during that time he had expended upon them a sum equal to the fee simple of the whole property, and that he was not deriving more income from them than he derived when he commenced that expenditure.' [2]

'If you look,' said the Earl of Kimberley,[3] 'into the reports of the Poor Law inspectors, you will find that it is the general practice of the landlords, when they happen to evict a small tenant, to give him a sum of money to take him to America, or to set him up elsewhere.'

The Conservative peers hailed with satisfaction that portion of the Land Bill of Mr. Gladstone, in 1870, which carried out the purpose which their late chief so long had in view. 'The clauses giving compensation for improvements,' said the Marquess of Salisbury,[4] 'meet with my hearty approbation.'

'The compensation clauses,' said the Earl of Bandon,[5] 'enact what practically every landlord at present gives to his tenants.'

The Conservative peers were also in favour of the clauses of the bill for enabling the State to advance money to tenants for the purchase of their holdings,[6] a principle which was afterwards greatly extended by the legislation promoted by Lord Ashbourne and Mr. Balfour. 'I feel,' said Lord Salisbury,[7] 'that no government can be secure unless a large number of persons are personally interested in its maintenance.' The word 'peasant-proprietor' was mentioned with approval.

Compensation for Disturbance

The bill introduced an entirely new remedy for what were termed 'capricious evictions'—'Compensation for Disturbance'—the imposition of a heavy fine on the landlord if he attempted to avail himself of his right to recover possession of

[1] 'One of the largest proprietors of Irish land, and most exemplary landlords in Ireland.' Mr. Horsman, Chief Secretary for Ireland, Hansard's *Parl. Debates*, third series, vol. cxxxviii. 155.
[2] *Ibid.* vol. cii. 5.
[3] *Ibid.* 87.
[4] *Ibid.* 75.
[5] *Ibid.* 91.
[6] Sects. 44–47, &c. of the 33 & 34 Vict. cap. 46.
[7] Hansard's *Parl. Debates*, third series, vol. ccii. 76.

his land from an unimproving tenant. The fine commenced at seven years' rent of the farm! This introduced the principle of what has not inaptly been termed 'dual ownership.'

The 'Revue des Deux Mondes' declared that no French reformer would dare to propose a scheme similar to this, for he would be accused of shaking the basis of society: to find a parallel, one must go back to the French Revolution.[1]

There was, however, one point at which the doctrine of compensation for disturbance ceased:—'Ejectment for non-payment of rent shall not be deemed disturbance.'[2]

'The whole tendency of the Lords' amendments was in the wrong direction.'[3]

When the Commons' amendments to the Lords' amendments were considered, Earl Granville, Secretary of State for Foreign Affairs, who had charge of the bill in the Lords, said[4] he thought that 'the course taken by the House of Commons had, in a great measure, justified that taken by their lordships; because, since a large number of the amendments made by their lordships had been agreed to by the Commons, the natural inference was that their lordships had made improvements in the bill.'

Let us consider the Lords' amendments specifically objected to by the author of 'Fifty Years of the House of Lords.'

(1.) 'The reduction of notice from twelve months to six.'[5]

The amendment forms part of section 58 of the Irish Land Act of 1870—'regulations as to notice to quit.' When the amendment was moved by the Duke of Richmond in committee on the bill, it was at once accepted by Earl Granville, who observed, that 'it was important that differences between landlord and tenant should not extend over a longer time than was absolutely necessary.'[6] Mr. Gladstone, when

[1] Cited by the Earl of Lucan on going into committee on the bill in the House of Lords. Hansard's *Parl. Debates*, third series, vol. ccii. 742.

[2] 33 & 44 Vict. cap. 46, sect. 9. We shall presently see that an exception was, in the course of the passage of the bill through Parliament, engrafted on this important principle.

[3] *Fifty Years of the House of Lords*, p. 9.

[4] Hansard's *Parl. Debates*, third series, vol. cciii. 331.

[5] P. 9. [6] Hansard's *Parl. Debates*, third series, vol. ccii. 1085.

the Lords' amendments were considered in the House of Commons, said at once, in response to Mr. Disraeli's request that he would state what Lords' amendments the Government were prepared to accept:—'The Government propose to accede to the amendment of the Lords which restores the term of notice to six months from twelve months.'[1]

(2.) 'The alteration which expunged the clause permitting tenants to let allotments to labourers without forfeiting all claim to compensation for disturbance. It was the only clause in the bill that did anything for the labourers, but it was struck out by the Lords.'[2]

By section 10 of the Land Act of 1870 ('exception in case of lands required for labourers' cottages'), power is given to the landlord, 'after six months' notice in writing served upon the tenant,' to 'resume possession of so much land (not to exceed in the whole one twenty-fifth part of any individual holding) as he may require for the *bona fide* purpose of erecting thereon one or more labourers' cottages, with or without gardens attached.'

As an incentive to the landlord to exercise this power, 'such resumption shall not, unless the court shall be of opinion that the same was unreasonable, be deemed a disturbance of the tenant,' subjecting the landlord to 'a claim for compensation.'[3]

This section was not in the bill as originally introduced. It was inserted on the report, in the House of Commons, on the motion of Mr. Chichester Fortescue, who said:—'It was a better way of dealing with the question than to leave the labourers' cottages to be provided by the tenant.'[4] A proviso was subsequently tacked on to the clause, enabling the tenant to erect the labourers' cottages, although Mr. Gladstone

[1] Hansard's *Parl. Debates*, third series, vol. cciii. 120.

[2] *Fifty Years of the House of Lords*, pp. 9, 10.

[3] In 1881 the power of letting a portion of his holding to a labourer, not exceeding half an acre, was given to a tenant (by sect. 18 of the Land Act, 1881), but it was so carefully guarded that no harm could arise. The Court must sanction it, and the landlord approve of the situation.

[4] Hansard's *Parl. Debates*, third series, vol. cci. 1417.

said[1]:—'It is not credible that any tenant—unless he has just come out of a lunatic asylum, or is about to go into one, will consent to build cottages' under this proviso. And it was this proviso, and not 'the clause,' which the House of Lords struck out!

Mr. Chichester Fortescue (afterwards Lord Carlingford) moved that the House of Commons agree with the Lords' amendments, and only twenty-nine members voted against the motion.[2] Sir John Esmonde, in supporting the motion, said,[3] that 'as no conditions were imposed as to the description of cottage to be erected' by the occupier, 'it would be in the power of any occupier to build hovels, instead of proper dwellings, for his labourers.' Lord Dunsany spoke of these 'hovels' as 'hideous excrescences, growing up under the "wigwam" clauses of the bill!'[4]

(3.) 'A conflict took place over the permissive registration of improvements, in which the Lords succeeded in carrying their point.'[5]

This refers to section 6 of the Land Act of 1870, which was not in the bill as sent up from the Commons. It was inserted in committee in the House of Lords on the motion of the Duke of Richmond.[6]

The object of the new clause was lucidly explained by Earl Cairns:—

'If upon an estate each of 2,000 tenants effected improvements to only the extent of 2*l.* per annum, in five years the very serious incumbrance of 20,000*l.* would be created. The proverb said that "short reckonings make long friends"; and the best way to preserve harmony between landlords and tenants was to provide that both should, at the earliest moment, know what each claimed in respect of the improvements that were effected. When fresh, these claims could be easily inquired into, but, if a period of twenty years

[1] Hansard's *Parl. Debates*, third series, vol. cci. 1432.
[2] 'Ayes' 396, 'Noes' 29; majority 367. *Ibid.* vol. ciii. 130.
[3] *Ibid.* 129.
[4] *Ibid.* vol. ccii. 330.
[5] *Fifty Years of the House of Lords*, p. 10.
[6] Hansard's *Parl. Debates*, third series, vol. ccii. 990-998.

were allowed to elapse, great uncertainty and conflicting testimony would arise and complicate the question.' [1]

Earl Granville decided not to divide the committee on the new clause, and it was accordingly agreed to.

(4.) 'The Lords succeeded in interpolating provisoes against the breaking up of grazing lands.' [2]

This Lords' amendment appears as part of section 4 of the Land Act of 1870. Lord Dunsany, in moving the amendment, said that 'the clause as it stood would transfer about twenty millions of the property of the landlords to the tenants.' The necessity for the amendment was considered so obvious, that it was at once accepted by the Government.[3]

(5.) 'The Lords restricted the number of cases in which compensation is due to the tenant on assignment.' [4]

Reference is probably made here to section 18 of the Land Act of 1870—'Restriction as to compensation in certain cases of assignment.' I would point out that this section was inserted on the motion of Earl Granville, who had charge of the bill in the Upper House, on the report.[5] Reference may also be intended to section 9, 'Ejectment for breach of any condition against assignment shall not be deemed disturbance of the tenant by the act of the landlord.' The words were inserted at the instance of Earl Cairns, without opposition, on the report.[6]

(6.) 'They increased the number of cases in which a landlord could evict without compensation.' [7]

I have just referred to one—'breach of any condition against assignment.' Earl Cairns added three others: 'Breach of any condition against subletting, bankruptcy, or insolvency' (section 9). The amendment was accepted without discussion.[8] The following words were added, also without discussion,[9] to section 9:—'Provided that no tenant, who shall

[1] Hansard's *Parl. Debates*, third series, vol. ccii. 991, 992.
[2] *Fifty Years of the House of Lords*, p. 10.
[3] Hansard's *Parl. Debates*, third series, vol. ccii. 960, 961.
[4] *Fifty Years of the House of Lords*, p. 10.
[5] Hansard's *Parl. Debates*, third series, vol. ccii. 1452, 1453.
[6] *Ibid.* 1451.
[7] *Fifty Years of the House of Lords*, p. 10.
[8] Hansard's *Parl. Debates*, third series, vol. ccii. 1451.
[9] *Ibid.* 997.

have *given notice* of surrender and afterwards refuse to give up possession [in pursuance of such notice], shall be entitled to any compensation under section 8 of this Act, though evicted by the landlord in a suit founded on *such notice*.'

(7.) 'They refused all compensation in the case of cottage allotments not exceeding one quarter of an acre.'[1]

This amendment was so obvious that no discussion whatever[2] took place with regard to it. The allottee did not come within the definition of a 'tenant' of 'a holding' in section 70, so the relation of landlord and tenant could not be said to exist.

(8.) 'The clause forbidding landlords to make any distress for rent due out of any holding held under a tenancy created after the passing of this act, unless such right of distress was expressly given in writing in the terms of the agreement, was struck out.'[3]

Mr. Pim brought forward in committee in the House of Commons a clause abolishing altogether the right of distress for recovery of rent, which Dr. Ball, afterwards Lord Chancellor of Ireland, objected to 'as wholly foreign to the bill.' Mr. Pim's clause was 'negatived.'[4] Nevertheless, Mr. Chichester Fortescue made it a peg to hang a new clause on, on the report,[5] and it was this clause which the Duke of Richmond induced the Lords to omit, Earl Granville confessing that 'it was, to some extent, *inconsistent* with other clauses of the bill'![6]

(9.) 'The bill, when sent up to the Lords, contained the proviso that, although the claim for compensation for disturbance should be voided, when the tenants were ejected for non-payment of rent, the court should be empowered, on special grounds, to award compensation even in those cases. The Lords struck this proviso out. . . . Mr. Gladstone yielded. . . . . One result of the clause, as it stood, would have been that the court would have been entitled to make an allowance

[1] *Fifty Years of the House of Lords*, p. 10.
[2] Hansard's *Parl. Debates*, third series, vol. ccii. 1057.
[3] *Fifty Years of the House of Lords*, p. 10.
[4] Hansard's *Parl. Debates*, third series, vol. cci. 1260, 1261.
[5] *Ibid.* 1420, 1421. [6] *Ibid.* vol. ccii. 1085.

to the tenant where, in the opinion of the chairman, *the rent* had been *exorbitant*.'[1]

The writer of the 'small work' cannot have read The Landlord and Tenant Act, 1870:—'The court may, if it think fit, treat such ejectment [for non-payment of rent] as a disturbance if, in the case of any such tenancy of a holding, held at an annual rent not exceeding 15*l*., the court shall certify that the non-payment of rent causing the eviction has arisen from *the rent* being an *exorbitant* rent.'[2]

These words were inserted in clause 9, by agreement between the Lords and Commons,[3] in substitution for the words 'on special grounds,' which would have conferred on the judge a dangerously extensive and vague power, leaving it open to him to determine arbitrarily, without any principles or rules being laid down to guide him, what should or should not be deemed 'disturbance.'[4] The substituted words, which were finally settled by the Lords, exactly meet the point which the author of 'Fifty Years of the House of Lords' says the Lords compelled the Government to 'sacrifice'!

Mr. Kavanagh on the Agitation of 1879

'The main principles of the agitation of 1879 were devised with more than ordinary ingenuity. They were framed with the purpose of appealing to the cupidity of every tenant farmer in Ireland, and this they did most successfully. Revolution, separation from England, and other extreme objects were most cleverly kept in the background. Tenant-right —the great principle of the North—and other two Fs (fixity of tenure and fair rents) were the ostentatiously adopted mottoes, so that for the first time we have the tenants of the North drawn into, and made accomplices in a movement, the real and ulterior objects of which would, if successful, have wrought their destruction.'[5]

[1] *Fifty Years of the House of Lords*, pp. 10, 11.
[2] 33 & 34 Vict. cap. 46, sect. 9 (*ad finem*).
[3] Hansard's *Parl. Debates*, third series, vol. cciii. 663, 820.
[4] Reasons of the Lords for disagreeing to certain of the Commons' Amendments to the Lords' Amendments.
[5] The Right Hon. Arthur Macmurragh Kavanagh (formerly M.P. for

The land legislation of 1870 and 1881 so revolutionised the relations between landlord and tenant, and induced such uncertainty as to what further changes might be projected,[1] that it became hopeless for even good landlords to persevere in improving their property.[2]

The Compensation for Disturbance Bill

'The Government made an attempt to restore the clause, abandoned in 1870, by the Compensation for Disturbance Bill of 1880. The bill passed the Commons; but, in the Lords, although the Peers were warned that its rejection would bring Ireland within measurable distance of civil war, it was rejected by an enormous majority'[3]—282 to 51, majority 231.[4]

The rejection of the Compensation for Disturbance Bill, 1880, by the Lords is a favourite theme with Radical orators and pamphleteers, 'Mr. Parnell' and 'The Land League,' and 'exasperation of tenants' being all attributed to it.[5] The *Speaker*[6] 'tears a passion into tatters' over it. 'Though the House of Lords has done many evil deeds in its day, it never did anything worse than this. It will be interesting to see how many more crimes, like the rejection of the Compensation for Disturbance Bill, the House of Peers can commit and survive.'

Let us consider a case under the bill. Suppose that a tenant in the area scheduled by the bill, with a rent of 10*l.* a year, owed three years' arrears of rent and alleged that he could not pay anything, on account of the bad harvests of that and the two preceding years, but was willing to remain on, paying nothing; and the landlord evicted him for the

the County Carlow), cited by Sarah L. Steele in her *Biography* of this eminent Irishman, chap. xxii. p. 247.

[1] So far from giving satisfaction, it has led to an agitation for the entire expropriation of Irish landlords by the compulsory transfer of the remainder of their interest to their tenants!

[2] *The Right Hon. Arthur Macmurragh Kavanagh; a Biography*, by Sarah L. Steele (1891), chap. xii. pp. 128, 129.

[3] *Fifty Years of the House of Lords*, p. 12.

[4] Hansard's *Parl. Debates*, third series, vol. cclv. 110.

[5] *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, appendix, p. 260. *Fifty Years of the House of Lords*, p. 12.

[6] Of Saturday, August 11, 1894. 'It was one of their greatest crimes.' Harold Spender, *House of Lords*, p. 16.

purpose of substituting a paying tenant, the tenant would, under these 'special circumstances,' have held his farm for three years for nothing, and would be entitled to claim 'compensation for disturbance' to the extent of seven years' rent, namely 70*l.* The landlord would thus lose, under this beneficent bill, no less a sum than 100*l.*! And all this time he would *have to pay all the outgoings of the estate* to which the farm belonged—poor rates,[1] county cess, tithe rent-charge (which continues, although the Irish Church has been disestablished and disendowed), income tax, the interest on mortgages (which are almost universal in Ireland)—and if he did not pay all the outgoings, he would be liable to actions all round.

From what source is the landlord to get the means of paying these numerous outgoings, if his power to recover the land and substitute a paying tenant were withheld from him, and seven years' rent, as 'compensation for disturbance,' were to be payable by him, in addition? Lord Annesley put the effect of the bill very neatly when he wrote[2]:—'A creditor, who asks his debtor to pay him what he owes him, will be *fined seven times over the amount of his debt!*'

The rejection of the bill was moved in the Lords by the late venerable Earl Grey,[3] who was secretary at war in the administration of Lord Melbourne, 1835–1839, and secretary of state for the colonies in the administration of Lord John Russell, 1846–1852, and who inherited the Liberal traditions of his father, the minister who carried the Reform Bill of 1832.

Earl Fortescue, another Liberal peer, stated in 1881[4] that 'the majority of *Liberal* peers would of itself have sufficed, without other aid, to throw out that bill—that discreditable, abortive attempt at ministerial legislation.'

The Earl of Beaconsfield, in supporting the motion for the rejection of the bill, said:—'My Lords, I believe this un-

[1] Only a moiety, where the tenant's holding is valued over 4*l.*
[2] Letter cited by Mr. Forster, when introducing the bill. Hansard' *Parl. Debates*, third series, vol. ccliii. 851.
[3] *Ibid.* vol. ccliv. 1851–1861. [4] *Ibid.* vol. cclxiv. 492.

happy measure will foster agitation in Ireland, because it is addressed to the sordid instincts of the people—an agitation conducted by men who believe that the property of others ought to belong to them. I cannot understand that the best way of alleviating agricultural distress is by plundering the landlords. Most illogically it imposes a burden on one class only in Ireland, to remedy the unexpected evils that have occurred, and that class not a numerous one, and, above all, a class that is suffering as well as the rest of the population.'[1]

Two Good Bills

Two very sensible bills were passed by the Lords this year, in view of the exceptional distress in Ireland, the Seed Supply (Ireland) Act, 1880,[2] and the Relief of Distress (Ireland) Amendment Act, 1880.[3] The former enactment enabled boards of guardians to supply tenants with seed potatoes, seed oats, and other seed; the latter enabled boards of guardians to grant outdoor relief in food and fuel, such relief not to involve loss of the franchise.

The Irish Land Act, 1881 (44 & 45 *Vict. cap.* 49)

The Lords 'read the Irish Land Bill of 1881 a second time'[4] without a division, although the *République Française* said that the bill was 'decided socialism.'[5]

Lord Carlingford, in moving the second reading, said[6] that the introduction of 'the power of appealing to a tribunal for the settlement of rent' was, 'no doubt, novel and exceptional legislation.'

Lord O'Hagan admitted[7] that it was impossible there should be judicial rents, without a violation of the principles of political economy.'

'There is nothing in the bill,' said Lord Salisbury, 'to

[1] Hansard's *Parl. Debates*, third series, vol. cclv. 94–108.
[2] 43 Vict. cap. 1. [3] 43 Vict. caps. 14 and 44.
[4] *Fifty Years of the House of Lords*, p. 12.
[5] Cited by the Marquess of Salisbury. Hansard's *Parl. Debates*, third series, vol. cclxiv. 259 (*République Française*, July 9, 1881).
[6] *Ibid.* 244. [7] *Ibid.* 272.

guide the land court in deciding what would be a fair rent. In what position,' he asked, 'is the landlord placed? Is he worthy to be called a landlord? He may not select his tenant;[1] he may not deal with his rent; he may not alter the construction of his estate; he may not consolidate his farms, which may appear to need it. In what part of the civilised world is that the definition of a landlord? That is not a landlord. He is a sort of mortgagee upon the estate, with an uncertain and precarious hold upon his income, and he is *head agent* to Serjeant O'Hagan, whose prepossessions are well known, and his colleagues, who will decide absolutely on matters of fact without appeal.'[2]

And for what were the Irish landlords punished?

When introducing the Bill of 1881 in the House of Commons, Mr. Gladstone said[3]:—

'Well, sir, I am bound to say that we should not think it just to propose legislation on this great matter on the ground, whether expressed or implied, of general misconduct on the part of the landlords of Ireland. On the contrary, as a rule, they have stood their trial, and they have, as a rule, been acquitted.'

The author of 'Fifty Years of the House of Lords' says,[4] 'The Lords struck fixity of tenure out of the bill'; but the Earl of Kimberley, Mr. Gladstone's colonial secretary, said,[5] 'Fixity of tenure is not in this bill.' How, then, could the Lords strike it out?

'The Lords excluded (1) sub-tenants.'[6]

There could be no privity of contract between the landlord and the sub-tenant; and the sub-tenant's interest was dependent on that of the tenant. Does the writer of the 'small

[1] 'The bill,' said Lord Carlingford, 'will, undoubtedly, deprive the landlord of the free choice of a tenant.' *Ibid.* 252.

[2] Hansard's *Parl. Debates*, third series, vol. cclxiv. 254–270. The Land Court have not thought it within their province to lay down any rules to guide *the sub-commissioners*, each of whom decides according to 'his own sweet will'!

[3] *Ibid.* vol. cclx. 892.

[4] P. 12.

[5] Hansard's *Parl. Debates*, third series, vol. cclxiv. 551.

[6] *Fifty Years of the House of Lords*, p. 12. See section 57 ('Definitions').

work' suggest that the landlord ought to pay 'compensation for disturbance' *twice over?*

'The Lords gave way.' This is a mistake. The Attorney-General for Ireland (Mr. Law) moved that the House do agree with the 'Lords' amendment.' The Lords' amendment was agreed to unanimously.[1]

'The Lords excluded (2) the victims of fraudulent leases.'[2]

The term 'fraudulent' does not occur in the statute. It is a well-known maxim of law that 'fraud vitiates every contract,' and there would have been no need to provide for such a case by legislation.

The clause[3] (which was not in the original bill), Earl Cairns said,[4] was 'absolutely novel. Nothing like it, or approaching it, had hitherto been known.' It enabled the court to cancel existing leases, and was a departure from the principles of the Act of 1870, the policy of which was to encourage landlords to give their tenants leases. By the Land Act of 1887,[5] however, the principle of this clause was extended to perpetuity leases.

'The Lords excluded (3) present leaseholders on the expiry of their leases.'[6]

Lord Lansdowne pointed out that the proviso, to which he objected, formed no part of the original bill of the Government. 'The proviso,' he said, 'imported into the contract the term (what neither party ever contemplated) that, over and above the thirty-one years, or longer period of the lease, the tenant, at the end of that period, should have another lease for fifteen years, renewable for ever!'[7]

A more sweeping, but more rational, reform was substituted in 1887 by the Lords themselves, when they sent down to the House of Commons an Irish Land Bill,[8] which placed the 150,000 leaseholders of Ireland on the same footing as tenants

[1] Hansard's *Parl. Debates*, third series, vol. cclxiv. 1590.
[2] *Fifty Years of the House of Lords*, p. 12. [3] Section 21, *sub. fin.*
[4] Hansard's *Parl. Debates*, third series, vol. cclxiv. 975.
[5] 50 & 51 Vict. cap. 33, sect. 2.
[6] *Fifty Years of the House of Lords*, p. 12.
[7] Hansard's *Parl. Debates*, third series, vol. cclxiv. 959.
[8] 50 & 51 Vict. cap. 33, sect. 1.

from year to year, for the purpose of enabling them, without waiting for the termination of their leases, to go into court and have fair rents fixed.[1]

'They altered the scale of compensation for disturbance, and were compelled to put it back.'[2]

The alteration in the scale of compensation, deliberately fixed by the legislature in 1870,[3] was, not unnaturally, regarded by the Lords as an unjustifiable interference with existing legislation.

What did Lord Carlingford, an expert in landlord and tenant law, say in 1881?[4]—

'I believe that compensation for disturbance, under this legislation, will sink very much into the background. I believe it will be swallowed up in the far sounder system of the sale of the tenant's interest,[5] as in Ulster.'

Earl Cairns agreed with Lord Carlingford that compensation for disturbance would 'sink very much into the background.' 'It is merged—it is absorbed—in the higher question of the right of free sale.'[6]

The right of free sale of the tenant-right, which had been a distinguishing feature of the Ulster custom, and the best means of compensating the tenant for his improvements, was extended by this bill to the whole of Ireland. And yet the bill screwed up still higher the scale of compensation for improvements!

Lord Salisbury, at the very first, however, when the Lords' amendment was carried, said[7]:—

'I do not think the clause is of the first importance, because I agree with the Lord Privy Seal[8] that, in the working of the bill, this compensation clause will almost entirely disappear.'

[1] See the *Annual Register* for 1887 ('History'), p. 96.
[2] *Fifty Years of the House of Lords*, p. 12.
[3] Landlord and Tenant (Ireland) Act, 1870' (33 & 34 Vict. cap. 46), section 3.
[4] Hansard's *Parl. Debates*, third series, vol. cclxiv. 248.
[5] The method of securing the value of the tenants' outlay on improvements.
[6] Hansard's *Parl. Debates*, third series, vol. cclxiv. 544. [7] *Ibid.* 801.
[8] Lord Carlingford (formerly Mr. Chichester Fortescue).

'They insisted upon allowing a tenant to be taxed on his own improvements, but gave way after making an alteration which impaired the value of the clause.'[1]

Mr. Spalding[2] states just the reverse. 'Ultimately, by compromise, the Lords secured the destruction of the provision to exonerate the tenant against being charged rent upon his improvements in his holding.'

Mr. Harold Spender, who only takes his 'facts' at second hand, treats[3] 'taxing a tenant on his own improvements,' and 'charging a tenant rent on his own improvements,' as two distinct things. 'Fortunately they were defeated' in the former; 'but they succeeded in carrying' the latter! This is the way in which Mr. Spender tries to reconcile the conflicting statements of the author of 'Fifty Years of the House of Lords' and Mr. Spalding.

As the bill originally was framed when introduced, the 7th clause (which now corresponds with section 8) ended as follows:—

(7.) 'During the currency of a statutory term, an application to the court to determine a judicial rent shall not be made, except during the last twelve months of the current statutory term.'

The bill passed through committee with this subsection unaltered. It was only on the report that Mr. Healy, the well-known Irish Nationalist member, moved the addition of the following words[4]:—

'The judicial rent for any further statutory term shall not exceed the judicial rent for the preceding statutory term, in respect of any improvements made by the tenant.'

The Attorney-General for Ireland, afterwards Lord Chancellor of Ireland,[5] said[6]:—'It is, I may almost say, absurd to suppose that under the bill the tenant's improvements could be taken into account against him in fixing a fair rent.'

[1] *Fifty Years of the House of Lords*, p. 12.
[2] *The House of Lords; a Retrospect and a Forecast*,' appendix p. 260.
[3] *The House of Lords*, p. 16.
[4] Hansard's *Parl. Debates*, third series, vol. cclxiii. 1978, 1980.
[5] The Right Hon. Hugh Law, M.P.
[6] Hansard's *Parl. Debates*, third series, vol. cclxiii. 1980.

Mr. Gladstone said[1]:—'According to the full belief of the Government, it is *absolutely impossible* under the bill to bring in the consideration of the tenant's improvements, so that any portion of the rent may be charged on them.'

Mr. Healy said[2]:—'I agree with the prime minister that it is not possible to put a finger on any part of the bill that will afford ground for the conclusion that a judicial rent could be leviable on the tenant's improvements.'

Nevertheless, the Attorney-General for Ireland wrote out on his knee, on the spur of the moment, a new subsection to remedy this purely imaginary grievance[3]:—'No rent shall be made payable in any proceeding under this act in respect of any improvement made by the tenant, or his predecessor in title.'

No wonder the Peers proposed to put back the amendment into the shape suggested by Mr. Healy.

Their amendment ran thus:—To add these words to the subsection in the bill: 'and on any such application, no rent shall be made payable in respect of improvements made by the tenant, or his predecessor in title, during such statutory term.' These words stood in the name of a Liberal peer, the late Viscount Monck, who was subsequently selected as one of Mr. Gladstone's Irish Land commissioners; but, in his absence, the Marquess of Salisbury moved them, and they were unanimously agreed to by the Lords.[4]

The Attorney-General for Ireland moved[5] to disagree with the Lords' amendment to the Commons' amendment, and succeeded in getting it rejected.

But suppose the tenant's improvements really belonged to the landlord, owing to his having paid or compensated the tenant for them? This was the case put by Mr. W. H. Smith.[6]

The Attorney-General for Ireland said:—'If the tenant had been already paid for the improvements, they could no longer

[1] Hansard's *Parl. Debates*, third series, vol. cclxiii. 1980. [2] *Ibid.*
[3] *Ibid.* 1981. Mr. Gladstone induced Mr. Healy to withdraw his amendment—'it ought to be a stronger proposal'!
[4] Hansard's *Parl. Debates*, third series, vol. cclxiv. 924.
[5] *Ibid.* 1475. [6] *Ibid.* 1477.

be considered his,' and he agreed, while declining to accept the Lords' amendment, to add these words to his own amendment: 'and for which, in the opinion of the court, the tenant or his predecessor in title shall not have been paid or [otherwise] [1] compensated by the landlord or his predecessor in title.' [2]

In this shape the subsection became law, and is now subsection (9) of section 8.

Mr. Spalding's statement [3] is quite contrary to fact, as 'no rent' can be 'made payable' on any improvement which is the *bona fide* property of the tenant.

The statement of the author of 'Fifty Years of the House of Lords' [4] is less preposterous, but he is in error in saying that 'the Lords made an alteration which impaired the value of the clause.' It was Mr. Gladstone's Attorney-General for Ireland, and not the Lords, who 'made the alteration.'

As for Mr. Harold Spender's invention of a *double* grievance, it is—well, worthy of Mr. Harold Spender!

'The only considerable blot that the Lords made in the bill was the rejection of Mr. Parnell's clause staying evictions pending the application for a judicial rent.' [5]

The history of this clause is thus given in the 'Annual Register' for 1881 [6]:—'The Lords had summarily thrown out the clause, adopted on the suggestion of Mr. Parnell, under which sale under writ might be stayed for six months, pending the decision of a fair rent; but the Government proposed, as a compromise, that the period of postponement should be limited to three months. Against this course Mr. Parnell and his followers strongly protested, and for more than two hours endeavoured to obtain better terms from the Government.' 'Mr. Parnell's clause was [again] struck out in the Lords.' 'On the Parnell clause the Government gave way altogether. The reason given by Mr. Gladstone for this

[1] The word 'otherwise' was subsequently inserted. Hansard's *Parl. Debates*, third series, vol. cclxiv. 1972, 1974.

[2] *Ibid.* 1477, 1485. [3] *Ubi supra.* [4] *Ubi supra.*

[5] *Fifty Years of the House of Lords*, pp. 12, 13. See also Mr. Spalding's *House of Lords*, p. 260. [6] Pp. 118, 119, 121.

desertion of his ally was, not deference to the Lords, or any secret understanding with the Opposition, but because the author of the clause (as adopted by the committee in the House of Commons) had pronounced it to be *worthless*.'

Mr. Gladstone, when announcing the intention of the Government not to insist upon the clause, said 'the point that was urged by the opponents of the clause was that it would offer a general inducement to a very large proportion of the tenants of Ireland to withhold the payment of rents, and to rush into court for the sake of obtaining a judicial rent, with a view to avoiding all payment of rent.' 'It would be very hard for the landlords, as well as the other creditors, to be kept out of their rents for a length of time.'[1]

The 'uncrowned king of Ireland' was so offensive to Mr. Gladstone on this occasion that the Speaker ruled him out of order, and he had to withdraw his imputations.[2]

The House resolved not to insist on the clause by a majority of 126.[3]

The clause formed no part of the original bill, and I fail to see how the Lords made 'a considerable blot *in the bill*' in rejecting it!

The author of 'Fifty Years of the House of Lords' contrasts favourably with Mr. Spalding[4] and his pupil, Mr. Spender,[5] in not censuring the Lords for 'excluding English-managed estates.' The whole justification of exceptional land legislation for Ireland rested upon the allegation that the Irish system of managing estates differed from the English; and Mr. Spalding and Mr. Spender have so little sense of justice that they actually blame the Lords for confining the Irish Land Act of 1881 to Irish-managed estates!

The Arrears of Rent (Ireland) Act, 1882 (45 & 46 *Vict. cap.* 47)

The author of 'Fifty Years' complains[6] that 'Lord Salisbury wished to throw out the Arrears Bill of 1882 altogether.'

[1] Hansard's *Parl. Debates*, third series, vol. cclxiv. 1989.
[2] *Ibid.* 1991. [3] *Ibid.* 1998: 'Ayes' (not to insist) 196, 'Noes' 70.
[4] *The House of Lords*, appendix, p. 260.
[5] *The House of Lords*, p. 16. [6] P. 13.

I venture to say that a more unprincipled measure was never placed upon the statute book.

There were two classes of tenants in Ireland at the time—honest, industrious tenants, who had been doing their very best to pay their rents and meet their just obligations, and lazy, idle, fraudulent tenants, who kept their rents instead of paying them. It was to the assistance of the latter that Mr. Gladstone came. He rewarded them for being lazy, idle and fraudulent by excusing them from the payment of all except one year's arrears, and that the nation had to pay for them! Mr. Gladstone cut down the landlord's claim to that one year, obliterating at one fell swoop all the previous liability. He punished the honest and industrious tenant by doing nothing at all for him, in respect of his holding, although he *had paid* the landlords for *the very selfsame gales of rent*, which, in the case of the lazy, idle and fraudulent tenants, were extinguished by the Arrears Act; but—more fool he for paying them! Is it surprising that the honest and industrious tenants bettered 'Mr. Gladstone's instruction'? They ceased to be honest and industrious, as soon as the Arrears Bill was announced, and threw in their lot, in future, with the lazy, idle and fraudulent tenants who had scored so disastrous a victory over them. Thus, although money was put in the pockets of the landlords, in the first instance, they lost by the Arrears Act in the long run, their best tenants being demoralised by it. It was plain that the Arrears Act had originated in the same brain which planned the Collier and Ewelme jobs!

The Land Law (Ireland) Act, 1887 (50 & 51 *Vict. cap.* 33)

By citing a stale pamphlet Mr. Gladstone has excluded from view the Land Law (Ireland) Act of 1887, which must be taken into account in any fair and reasonable retrospect of the conduct of the Lords in relation to the Irish Land question. The credit of it was partly due to the Conservative Government, partly to the Liberal-Unionists.

This bill was first introduced into the House of Lords, and

then sent down to the Commons. It contained a provision[1] for placing *leaseholders* at the end of two years—not at the end of their leases, as section 21 of Mr. Gladstone's Land Act, 1881, provided—on precisely the same footing as tenants from year to year, as regarded the power to apply to the Land Court to have fair rents fixed.

'The proposal to extend the benefit of the measure to leaseholders,' says the 'Annual Register,'[2] 'was almost unanimously approved by the press.'[3]

Another very important boon to tenants, and one which is said to have struck off two millions sterling of rent, was the variation of the rents for three years on a sliding scale, regulated by the prices, at different periods, of agricultural produce.[4]

The delays in obtaining a hearing, after applying to the Land Court to fix a fair rent, almost amounted to a denial of justice to the tenant; so by section 5 of the Land Act of 1887 it was provided that the judicial rent, when fixed, should *relate back* to the date of the application, and not run merely from the date of the decision of the court. This was another boon to Irish tenants.

The Land Purchase Acts, 1885, 1888, 1889, 1891 (48 & 49 *Vict. cap.* 73; 51 & 52 *Vict. cap.* 49; 52 & 53 *Vict. cap.* 13; 54 & 55 *Vict. cap.* 48)

'Dual ownership' is, as we have seen, the abnormal outgrowth of Mr. Gladstone's exceptional land legislation for Ireland. It is a kind of hybrid monster, unparalleled in any part of the civilised world. The landlords of Ireland have *the responsibilities*, but hardly any of the rights, of the owners of the soil elsewhere.

The best efforts of Conservative statesmen like Lord Ashbourne and Mr. Balfour have been directed to the solution of the difficult problem how to transmute dual ownership into peasant proprietorship, consistently with common honesty; and the Land Purchase Acts of 1885, 1888, 1889,

[1] 50 & 51 Vict. cap. 33, sect. 1.
[2] For 1887 p. 96 ('History').
[3] 50 & 51 Vict. cap. 33, sect. 29.
[4] *Ibid.*

and 1891, are the legislative outcome of these efforts. They have all been heartily welcomed by the House of Lords.

The Light Railways (Ireland) Act, 1889
(52 & 53 *Vict. cap.* 66)

The patriotic plan for opening up the congested districts in Ireland, and at the same time affording employment to the poor, industrious peasants there, is due to Mr. Balfour, the leader of the Conservative party in the House of Commons.

The construction of light railways on the western seaboard has earned for him a unique popularity among the warm-hearted natives of the sister country.

The Municipal Corporations (Ireland) Bills, 1838, 1839

I have traced the history of the Municipal Corporations (Ireland) Bills down to the end of the reign of King William IV. It now becomes my duty to take up the narrative, and prove the hollowness of the pretences on which this measure is made the foundation for an attack on the House of Lords.

Mr. Spalding in one breath states [1] that the Irish bill was 'framed upon the same principles as the English *Municipal* Reform Act,' and in the next states that 'it proposed to abolish the old corrupt corporations, and to substitute for them a council elected by the inhabitants, with a 10*l.* qualification in the *larger* towns, and a 5*l.* qualification in the smaller.' There was no '10*l.* qualification' or '5*l.* qualification' in the English Municipal Reform Act,[2] although there was a 10*l.* qualification in the English Parliamentary Reform Act.[3]

The author of 'Fifty Years of the House of Lords' [4] is just as mixed as Mr. Spalding: rather more so, for he says:—

'The House of Commons demanded that the principle adopted in England *and Scotland* should be applied to Ireland. When the Lords were asked to mete out the same measure that they meted out to England and Scotland, they refused.'

The author of 'Fifty Years' contradicts himself, for he says [5]:—'"Give us the English municipal franchise!" was the

[1] *House of Lords*, p. 202. [2] 5 & 6 Will. IV. cap. 76, sect. 9.
[3] 2 Will. IV. cap. 45, sect. 27. [4] P. 20. [5] Pp. 20, 21.

cry of O'Connell; but not even the House of Commons dared to place all Irish householders in towns on the burgess-roll.' How then can he indict the House of Lords for 'refusing' to mete out to Ireland' 'the same measure that they meted out to England'? His political allies did not propose to 'mete out the same measure to Ireland as to England.' A clue to the situation, however, will be found in the 'small work'[1]:—'The Lords had passed a bill reforming the government of the Scotch burghs, with only a single protest, in 1833.' This bill, or rather these bills, for there were two, were passed, it will be seen, two years before the English Municipal Corporations Act. They proceeded on a very intelligible principle. They assimilated the municipal franchise of the Scottish burghs to the parliamentary franchise introduced in the previous year.[2] What was that parliamentary franchise? Let the Scottish Representation of the People Act, 1832, answer.

By the statute 2 & 3 William IV. cap. 65, sect. 11, every person who shall have been for not less than twelve months in the occupancy of any house of the yearly value of 10*l.* in any city, burgh, or town, and shall have been resident there or within seven miles of it, for six months, and shall have paid all assessed taxes, shall be entitled to vote at elections.

Would it not have been a reasonable thing to have proposed to assimilate the Irish municipal franchise to the Irish parliamentary franchise, and thus put Ireland and Scotland on the same footing?

What was the Irish parliamentary franchise? It will be found in the Irish Representation of the People Act, 1832.

By the statute 2 & 3 William IV. cap. 88, sect. 7, every person who shall occupy in any city, town, or borough, any house of the clear yearly value of not less than 10*l.*, and shall have occupied the premises for six months, and shall have paid all grand jury and municipal cesses, rates and taxes, shall be entitled to vote for members of parliament for such city, town, or borough.

[1] P. 20.

[2] 3 & 4 Will. IV. cap. 76 (Royal Burghs), sect. 1; 3 & 4 Will. IV. cap. 77 (other Parliamentary Burghs), sect. 2.

What was the conduct of the Peers? They insisted in putting the Irish municipal franchise on the same footing as *the Scotch*, 'as high as 10*l*.,' as the author of 'Fifty Years' complains, and the government, 'wearied out' with their own vacillating conduct, proposing one year 10*l*. and 5*l*., another year 8*l*., another year 8*l*., leading up in three years to the English municipal franchise, 'gave way.'

The bills of 1838 and 1839 got their *coups de grâce*, not from the Lords, but from Lord John Russell in the Commons.[1]

The Municipal Corporations (Ireland) Act, 1840 (3 & 4 *Vict. cap.* 108)

Viscount Morpeth, in introducing the bill of 1840, on January 27[2] in that year, adopted a very conciliatory tone, but some of the objectionable provisions of former years were reproduced, and a new prospective provision added.

The principle of the bill, the abolition of the then existing municipal corporations in Ireland, having been, over and over again, approved of by the House of Lords, the second reading was carried by a large majority in that House—131 to 32.[3] With regard to the different qualifications for different boroughs, Lord Lyndhurst pointed out,[4] on going into committee, that there was *no variety* of qualification either in England or Scotland, and the 10*l*. franchise corresponded exactly to that of the Scottish municipal bill. He objected to the new prospective arrangement.

In committee Lord Lyndhurst carried, by a majority of 42,[5] an amendment substituting for the qualification sent up from the Commons the same qualification as the Lords had inserted in the bill of 1838, 'the qualification, in fact, of the *Scottish* Municipal Reform Acts, the occupation of a house of

[1] The debates will be found in Hansard's *Parl. Debates*, third series, vols. xxxix. xliii. xliv. xlv. xlvi. xlviii. xlix. and l. The votes in support of the government bills ranged as low as 20 [286 to 266 on Sir Robert Peel's uniform 10*l*. franchise, with rating, *Ibid.* vol. xliii. 651], 15 [169 to 154 on the question that 'the Lords' amendments stand part of the clause,' *Ibid.* vol. xliv. 922], and 8 [111–103 on the question of municipal boundaries, *Ibid.* 907].

[2] *Ibid.* vol. li. 641.

[3] Majority 99; *Ibid.* vol. liii. 1180.

[4] *Ibid.* vol. lv. 168.

[5] 92 to 50; *Ibid.* 190, 191.

10*l.* value for the twelve months preceding, and payment of all rates.'

On August 7, 1840, Viscount Morpeth moved that the House do not insist on their amendments, and this was agreed to *nem. con.*, and the Lords' amendments were adopted.[1] The royal assent was given to the bill on the day before parliament was prorogued.[2]

From this historical *résumé* it will be seen that it was only the obstinacy of the ministry of the day and the House of Commons which postponed for years an amicable arrangement, on the basis of the qualification originally proposed by them for the *larger* towns in Ireland!

The hesitation of the Lords in the first instance was only natural; they were dealing with a country which had been—*teste* Daniel O'Connell—in a chronic state of disaffection for 700 years.

Irish local bodies are continually acting *ultra vires*, passing resolutions on all kinds of topics, entirely outside the limited range of their duties. They have a tendency to transform themselves into miniature parliaments. Even such minute bodies as boards of guardians frequently become hotbeds of political agitation, and exhibit the grossest favouritism.

The Irish Tithes Act, 1838
(1 & 2 *Vict. cap.* 109)

'In 1838 the fifth bill dealing with the question of Irish tithes was introduced into the House of Commons. To secure its acceptance by the House of Lords, the government assented to the elimination of the appropriation clause. The alien Church was to keep all its endowments, not one penny was to be devoted to the education of the people.'[3]

'Irish tithe commutation was settled in 1838.'[4]

We have seen that the appropriation clause was not in the Irish Tithe Bill of 1837, which failed owing to the death of King William IV.[5]

[1] Hansard's *Parl. Debates*, third series, vol. lv. 1389, 1394.
[2] *Ibid.* 1398, 1407.
[3] *Fifty Years of the House of Lords*, p. 27.
[4] *House of Lords*, by T. A. Spalding, LL.B., chap. xvi. p. 186.
[5] See Chap. XIX. *supra*.

A desperate attempt to defeat the bill of 1838 by insisting on the appropriation clause, as an 'instruction' to the committee on the bill, was made in the House of Commons by Mr. Ward, but he was handsomely beaten by a majority of 224![1] Mr. Gladstone voted with the majority, against the insertion of the appropriation clause.[2]

Viscount Morpeth said 'a period had now come when it became a matter of paramount duty to terminate the excitement, the agitation, the collisions, the litigation, the increasing dissensions, between the clergy and laity, the biting exasperations between Catholics and Protestants, and the increasing risk of bloodshed, which were the result of the present state of the tithe question in Ireland.'[3]

The blame of this was entirely due to the bigotry and intolerance of O'Connell, who had kept the Irish clergy in a state bordering on starvation, rather than have the tithes, payable by the Roman Catholic peasantry, converted into a tithe-rent charge, payable by the Protestant landowners.

O'Connell now declared that 'the people of Ireland' 'sought no appropriation of a paltry *imaginary* surplus, but they called for the entire abolition of the tithes system.[4] They would not be deluded by any imaginary surplus. He required that out of the consolidated fund provision should be made for the payment of the clergy of the Church of Ireland.' Thus O'Connell reverted to the scheme for making the Irish clergy a state-paid set of officials.

O'Connell voted against Mr. Ward![5]

Mr. Shaw, recorder of Dublin, carried an amendment against the government in committee, substituting 25 per cent. for 30 per cent., as the amount which the Irish clergy were to lose for the additional security afforded them by the bill, in commuting the tithes into a tithe rent-charge.[6] Mr. Gladstone voted with the majority of 21.[7] O'Connell voted with the government.[8]

[1] 270 to 46. Hansard's *Parl. Debates*, third series, vol. xliii. 1177–1202. [2] *Ibid.* 1203. [3] *Ibid.* 1185, 1186.

[4] *Ibid.* 1189, 1191. Contrast this with Mr. Spalding's assertion that 'the appropriation clauses would have tended to allay Irish discontent,' p. 190. [5] Hansard's *Parl. Debates*, third series, vol. xliii. 1204.

[6] 188 to 167. *Ibid.* 1209. [7] *Ibid.* 1211. [8] *Ibid.* 1210.

The bill was read a second time in the House of Lords without opposition, without even discussion. Lord Brougham was very bitter on the motion for going into committee. He charged the government with 'emasculating' the bill; and said 'it would have been far more feeling that the measure should have suffered at the hands of your lordships than from those of its unnatural and wretched parents.'[1]

The Irish Church Act, 1869
(32 & 33 *Vict. cap.* 42)

'The Lords triumphed, and the Church of Ireland was saved,' says the author of 'Fifty Years of the House of Lords,'[2] 'for a time. The sequel of the victory was not seen for thirty years. In 1868 the House of Lords rejected Mr. Gladstone's resolutions, demanding the disestablishment and disendowment of the Irish Church. It was their last effort. In the following year the second reading of the Disestablishment Bill was carried in the Upper Chamber by 179 votes to 146, and the Establishment, which the Peers refused to adapt to the wants of the nation in 1838, was swept away altogether, with their assent, in 1869.'

'By opposing partial disendowment the Lords made inevitable,' says Mr. Spalding,[3] 'the more thorough disendowment and disestablishment which was carried into effect, in spite of their protests, in 1869.'

'It is idle to speculate[4] upon the possible results of a measure which has never been brought to the touchstone of practical experience, but it is at any rate within the bounds of possibility that the less stringent proposal might have so far satisfied the opponents of the Church that the more stringent measure would never have become a popular demand; but the action of the House of Lords prevented this doubt from being solved.'

There is a certain amount of plausibility about these arguments; but they will not bear examination. They involve the fallacy, '*Post hoc, ergo propter hoc.*'

[1] Hansard's *Parl. Debates*, vol. xliv. 942. Lord Brougham entered a solitary 'protest' against the bill. [2] P. 27. [3] P. 182.

[4] Then why does he 'speculate' upon it? Why does he assert that the rejection of the one rendered the other 'inevitable'?

The long postponement of the final attack upon the Irish Church (more than three decades) was undoubtedly due to the firmness of the House of Lords in rejecting, over and over again, the appropriation clause, and so repelling aggression. The vantage-ground which would have been gained by the acceptance of that clause would have been used as a lever to extort fresh concessions.

The great benefit obtained by the Irish Church from the withdrawal of the appropriation clause, owing to the persistent opposition of the House of Lords, was this. The act for substituting rent-charges for tithes in Ireland [1] did not afford the slightest foothold to those who sought to disestablish and disendow the Irish Church. There was no pernicious principle, nothing, indeed, whatever within 'the four corners' of the act, that they could seize upon. Mr. Gladstone was compelled to fall back on the Irish Church Temporalities Act, of 1833, which suppressed ten bishopries and suspended appointments to parishes where Divine Service had been intermitted for three years, when he introduced his Suspensory Bill in 1868. 'As to the methods of procedure to be adopted with regard to those offices not to be filled up, they are substantially described and provided already in the Irish Church Temporalities Act of 1833. The measures then taken with respect to the bishoprics, proposed by Lord Derby to be abolished, are the measures which will serve for the purpose now. With regard to benefices, I have only to say that the arrangements as to the manner in which vacancies are to be dealt with will be precisely the same as they were under the act of 1833, in the case of suspended benefices.' [2]

Mr. Gladstone himself has described the state of things brought about by the Tithe Commutation Act of 1838, in glowing terms [3]:—

'But during the thirty years which have elapsed since 1838, what have we had in Ireland? In the first place, we have had the clergyman pursuing his vocation in perfect tranquillity, and without an external barrier of any kind to impede him.

[1] 1 & 2 Vict. cap. 109.
[2] Hansard's *Part. Debates*, third series, vol. excii. 318.
[3] *Ibid.* vol. cxci. 483, 484.

In the second place, we have had a clergy claiming and well earning the name of an able, a zealous, and a pious clergy.'[1]

The late Mr. Froude thus describes the Irish clergy:—

'The rebellion of 1798, the rapid growth of the Catholic population, the immediate contact with the Catholic system in an aggressive form, and the relaxation of the penal code, gradually roused the clergy to exertion. The ruined churches were repaired, or others provided; and before the middle of the present century the Protestant ministers in Ireland were showing a sincerity, a piety, a devotion to the work of their calling of exceptional and peculiar interest. I was myself at that time brought in contact with many of the Established clergy in the southern provinces. They had more of the saintly character of the early Christians than any clergy of any denomination that I had ever fallen in with.'[2]

'After the tithe question had been settled,' continues Mr. Froude,[3] 'they had no quarrels with the Catholic peasantry. They were poor, but they were charitable beyond their means. They were beloved, respected, trusted by all classes of the population. In every parish there was a resident educated gentleman, whose help in the most miserable times was never asked in vain, if the occasion was not beyond the resources of those to whom the appeal was made.'

Mr. Froude has described, in scathing terms, Mr. Gladstone's sudden 'reversal of the policy of centuries':—

'Before letting loose an agitation so far-reaching and of such uncertain consequences, Mr. Gladstone ought to have laid out the whole problem for consideration in all its possible issues, not partially and crudely, for an immediate election cry, but in a form in which it could be maturely discussed and paused over for years. To reverse and undo the policy of centuries was a step which ought not to have been ventured without the national consent. The electors knew less of Ireland even than Mr. Gladstone himself, who ought to have

[1] But see Hansard's *Parl. Debates*, third series, vol. cxciv. 1954.

[2] *The Prime Ministers of Queen Victoria—The Earl of Beaconsfield*, by J. A. Froude, p. 205.

[3] *Ubi supra.*

made them first understand what it was which they were called on to sanction.

'But these are not times for long reflection. A parliamentary leader sees an opportunity. His followers echo him. Sentiment displaces reason, and a majority is the most conclusive of arguments.' [1]

The utter failure of the 'policy of conciliation,' and the need for a strong hand to curb the unruly wills of the Celtic Irish, are depicted in vigorous sentences by Mr. Froude, who seems to me, more than any other writer, to have probed the folly of Mr. Gladstone's so-called 'messages of peace' to Ireland:—

'Protestant ascendency was the instrument by which the connection was maintained, and the only one which had even partially succeeded. If it was swept away, what was to take its place? Conciliation, we are told. But what had conciliation effected hitherto? The abolition of the penal laws was to have brought peace. It brought only a sword. The admission of the Catholics to the franchise was to have brought peace. It was followed instantly by rebellion. Parliament was opened to them, and tithe riots broke out, and midnight murdering. On the heel of each concession came a coercion act, because Ireland could not be governed otherwise. The eager Celt has regarded each step gained as the conquest of an outwork of English dominion, which has served but to whet the appetite for attack and to weaken the defence. What reason was there to suppose that when they heard Church and landlords denounced, when they were told by a great English statesman that their grievances would only be attended to when they made themselves dangerous, the result would be different? The great grievance of all, the English sovereignty, would be left. If that, too, was to be sacrificed—if, after the internal administration of their country was made over to themselves, they showed that nothing would satisfy them except national independence—were the advocates of a trusting policy prepared to concede this point also?' [2]

In 1886 the House of Commons said 'No.' In 1893 the

[1] *The Earl of Beaconsfield*, by J. A. Froude, p. 210. [2] *Ibid.* p. 209.

House of Commons said 'Yes'; and then arose that splendid opportunity for the intervention of the House of Lords to stay this headlong course; and the House of Lords embraced it with eagerness.

In opposing the Irish Church legislation of Mr. Gladstone,[1] the House of Lords were fighting for the maintenance of the Act of Union between Great Britain and Ireland; and let there be no blinking of facts—the Irish Church Act treats Ireland on the footing of a *separate* nation, counting the number of adherents of the United Church of England and Ireland in Ireland, without any regard to the number of the adherents of that Church in England, and repealing that portion of the Act of Union which says that the maintenance of the United Church should be considered 'an essential and fundamental part' of the Act of Union.

The Home Rule movement received its chief impulse from the Irish Church Act, which gave, for the first time since the passing of the Act of Union, a legislative sanction to the pernicious notion, which lies at the very root of Home Rule, that Ireland is 'a nation' distinct from the rest of the United Kingdom.

Speaking of the Act of Union, the Earl of Rosebery says, in his Life of Pitt[2]:—'Seventy years afterwards the Irish Church Establishment, which it had been one of the main objects of the treaty to preserve, suddenly toppled over and disappeared. *With it went the keystone of the Union.*'

The writer uses the offensive term 'alien Church,' in reference to the Church of Ireland[3]—a term which is not only offensive, but untrue. The Church of Ireland is identical in doctrine with the early Irish Church of St. Patrick. In the 'creed of St. Patrick' none of the modern 'developments' of the Church of Rome will be found.[4] It was really England which introduced the Church of Rome into Ireland, Henry II.

[1] P. 27. [2] Chap. xi. p. 200.

[3] *Fifty Years of the House of Lords*, p. 27.

[4] Anyone who wants further information on this subject had better consult *St. Patrick, Apostle of Ireland*, by the late learned Dr. Todd, Senior Fellow of Trinity College, and Regius Professor of Hebrew in the University of Dublin, Treasurer of St. Patrick's Cathedral.

annexing Ireland under the blessing of Adrian IV., an Englishman who was then Pope.

'The Irish Church Act,' said Lord St. Leonards, when moving the rejection of the Ecclesiastical Titles Act Repeal Bill, in 1870,[1] 'removed the Irish bishops from the House of Lords; and if ever there was an Irish grievance, that certainly was one.'

In moving in committee on the Irish Church Bill, in 1869, the omission of the words in the 18th clause, which declared that, after the appointed day, 'no archbishop or bishop of the said Church shall be summoned to or qualified to sit in the House of Lords,' I pointed out[2] that the Irish Spiritual Peers, with two exceptions,[3] assented in the Irish House of Lords to the Acts of Supremacy and Uniformity; I enumerated amongst the illustrious prelates who had adorned the Irish Spiritual Peerage, Archbishop Usher, Bishop Bedell, Bishop Berkeley, Bishop Jeremy Taylor, Archbishop Whately, and Archbishop Trench, the then Archbishop of Dublin;[4] and I argued that the 18th clause repealed the 4th article of the Treaty of Union, which provided that four Irish lords spiritual should sit in the House of Lords of the United Kingdom—an article which was not touched by the exceptions in the 71st clause.[5]

By an amendment, then unanimously agreed to,[6] the existing Irish prelates were secured, during their lives, the same precedence as they enjoyed prior to disestablishment.

The House of Lords, in committee on the Irish Church Bill, unanimously agreed to an amendment, moved by the Earl of Clancarty, to add to clause 18 the following proviso[7]:—

'Provided also that every present archbishop and bishop of the said Church shall be deemed qualified, and shall

[1] Hansard's *Parl. Debates*, third series, vol. cci. 1480.
[2] *Ibid.* vol. cxcv. 1128, 1130. See also *Ibid.* vol. cxciv. 1952.
[3] Walsh, bishop of Meath, and Leverous, bishop of Kildare.
[4] Hansard's *Parl. Debates*, third series, vol. cxcv. 1128.
[5] At the request of Mr. Gathorne Hardy (now Earl of Cranbrook)—Hansard's *Parl. Debates*, third series, vol. cxcv. 1135—who shadowed forth certain technical difficulties in carrying it out after disestablishment—I withdrew my amendment. *Ibid.* 1136.
[6] *Ibid.* 1137.
[7] *Ibid.* vol. cxcvii. 874–883.

continue to enjoy, during his life, the privilege of being summoned to sit in the House of Lords.'

'The government,' said Earl Granville,[1] 'had anxiously considered the matter, and much desired to continue the representation of the Irish episcopal bench in your lordships' House.' Earl Granville, however, referred to the technical difficulties in the way of carrying this out, raised by Mr. Gathorne Hardy, on my motion in the Lower House.

The Marquess of Salisbury,[2] the Earl of Derby,[3] Earl Cairns,[4] and the Archbishop of Canterbury[5] all supported the amendment.

The Earl of Devon[6] carried a motion, after the third reading in the House of Lords, by a majority of 26, to omit from clause 13 the amendment inserted in committee in the Lords at the instance of the Earl of Clancarty. It was contended that the existing Irish prelates would occupy an anomalous position, sitting as 'rotary life peers,'[7] not as bishops, their baronial tenure having been destroyed by the Irish Church Act.[8] They would sit, not as Lords Spiritual, but as Lords Temporal, owing to once having been Lords Spiritual.[9]

Earl Cairns retorted[10] that *the whole* of the bill was an 'anomaly,' 'greater than any that ever was before known in this country.'

The Conservative party, at all events, are not committed to the pernicious principle underlying the Irish Church Act, that property, solemnly dedicated to God's service, can be properly confiscated and alienated to secular uses.

With regard to the action of the House of Lords respecting the Irish Church, I cannot conceive of anything more strictly in accordance with the principles which, since 1832, have been recognised as governing the action of our Second Chamber. In 1868 the Suspensory Bill was sprung upon the House of Lords suddenly, by a statesman who had formerly

[1] Hansard's *Parl. Debates*, third series, vol. cxcv. 876, 877.
[2] *Ibid.* 877. [3] *Ibid.* 878. [4] *Ibid.* 880.
[5] *Ibid.* 883. [6] *Ibid.* 1614–1624; 108 to 82.
[7] *Ibid.* 1619. [8] *Ibid.* 1617.
[9] *Ibid.* 1620. [10] *Ibid.* 1620.

been a staunch advocate of the Irish Church [1] and who was ambitious of climbing to power on the ruins of that Church. It was sprung upon them at the very time that a Reform Bill had been passed, without waiting for the reference of the question to the expanded electorate. What else could the House of Lords do but reserve the question for that electorate's decision?

But in 1869 everything was changed.

The general election of 1868 turned distinctly on the Irish Church question.

Mr. Disraeli quietly retired as soon as the result was known, and Mr. Gladstone, victorious at the polls, became prime minister.

The second reading of the Irish Church Bill was carried in the House of Commons by a majority of 118; the committee stage was carried by a majority of 126; the third reading was carried by a majority of 114.[2]

If the 'referendum' were ever to be recognised as justifying the submission of the House of Lords to the national will, this was that occasion.

Lord Salisbury, in assenting to the second reading of the bill, based himself entirely on this 'national verdict.'

'The object of the existence of a second House of parliament is to supply the omissions and correct the defects that occur in the proceedings of the first. But it is perfectly true that there may be occasions in our history, in which the decision of the House of Commons and the decision of the nation must be taken as practically the same. We must decide—each for himself, upon our consciences, and to the best of our judgment, in the exercise of that tremendous responsibility which, at such a time, each member of this House bears—whether the House of Commons does or does not represent the full, the deliberate, the sustained convictions of the body of the nation. One of the rare occasions to which I have referred has now occurred. The opinion of Scotland and

[1] 'I am prepared to defend the Irish Church.' See Chap. XIX. *supra*.

[2] The respective numbers were 368 to 250, 355 to 229, and 361 to 247.

Ireland, and, I may add, of Wales, is passionately in favour of this measure. England, though more doubtfully and languidly, is also in favour of the same measure. And looking at these facts, and at the general current of opinion; looking at all quarters of the political horizon, and seeing succour in none, I can conscientiously come to no other conclusion than that the nation has decided against Protestant ascendency in Ireland, and that this House would not be doing its duty if it opposed itself further against the will of the nation.'[1]

When the bill came before the House of Commons, after leaving the House of Lords, I did not hesitate to express my regret that the House of Lords had read the bill a second time and assented to a compromise.[2] But, looking back after the lapse of a quarter of a century, I must admit that the House of Lords, as a second chamber, had no alternative but to submit to the inevitable. This does not, however, in the least lessen my dislike for the measure. I feel now, and shall, I believe, continue to feel till my dying day, that the Irish Church Act is one of the most flagitious measures that ever disfigured the statute book, a sacrilegious confiscation of religious endowments, a gross violation of the Act of Union between Great Britain and Ireland, which has, more than anything else, stimulated the pernicious demand for Home Rule, a measure tinctured with the basest ingratitude towards the Protestants of Ireland, and especially towards the descendants of those men who settled in that country on the faith of assurances that their religion would be irrevocably placed on the same footing as that of England.

Mr. Ewald, in his elaborate work, 'The Earl of Beaconsfield and his Times,'[3] is very severe upon Mr. Gladstone's conduct:—

'The elevation of his rival to the post of premier seemed to have sharpened the spiteful jealousy with which he was ever accustomed to regard the position and actions of Mr. Disraeli;

[1] Hansard's *Parl. Debates*, third series, vol. cxcvii. 83, 84, 85.

[2] See Hansard's *Parl. Debates*, third series, vol. cxcviii. 581, 582, and the *Annual Register* for 1869, p. 119 ('History').

[3] 1882. Vol. ii. p. 81.

and in order to gratify his spleen, he was prepared to sacrifice the convictions of a lifetime. The Liberal party were divided; but upon one point they were united—the disestablishment of the Irish Church. He had, within a few months of his scandalous apostacy and nefarious bid for power, stoutly maintained that neither the position nor the revenues of the Irish Church ought to be tampered with. The cry of disestablishment was, however, too serviceable for party ends and interested motives not to be taken advantage of; and Mr. Gladstone, in spite of all past professions to the contrary, loudly sounded it, and, as its brazen tones fell upon his once disaffected followers, divisions ceased, and intestine feuds were silenced.'

'As the right hon. gentleman proceeded,' said Mr. Disraeli, 'it appeared that the crisis of Ireland, which has just arrived, was the culminating point of a controversy which had existed for seven hundred years! I could not but feel that I was indeed the most unfortunate of ministers, since, at the moment when I arrived, by Her Majesty's gracious favour, at the position I now fill, a controversy, which had lasted for seven hundred years, had reached its culminating point, and I was immediately called upon, with my colleagues, to produce measures equal to such a supernatural exigency.'[1]

Insult has been added to injury by the proposal to appropriate 200,000*l.*, *part of the Irish Church Fund*, to the dispossession of honest and thrifty tenants (nicknamed 'planters'), and the reinstatement of dishonest and thriftless tenants, who were evicted, years ago, not because they could not, but because they would not, pay their rent, which they fraudulently made away with. Happily the Lords gave this wicked proposal its quietus.

[1] Speech of Mr. Disraeli, when closing the debate on Mr. Maguire's motion, March 16, 1868, cited by Mr. Ewald in his *Earl of Beaconsfield and his Times*, vol. ii. p. 83; and see Hansard's *Parl. Debates*, third series, vol. cxc. 1771. A 'final *adjustment* of the Ecclesiastical arrangements of Ireland,' Queen's Speech, Feb. 16, 1869. *Ibid.* vol. cxciv. 26. 'The object we have in view' is 'to *readjust* the relations of the House of Commons to the House of Lords.' Lord Rosebery at Devonport, Dec. 11, 1894. *Daily News*, Dec. 12, 1894.

The Ecclesiastical Titles Acts, 1851 (14 & 15 *Vict. cap.* 60)

In order to establish the thesis that the House of Lords is not a good 'revising chamber,' both the author of 'Fifty Years' and Mr. Spalding found themselves on this measure,[1] which they seem to suggest the House of Lords ought to have rejected. 'The very circumstance in which the second chamber is supposed to operate for the benefit of the nation had arisen. This measure was "rash and ill-considered." Nevertheless, the House of Lords passed the bill without a single amendment.'

I wonder if these writers regard the Catholic Emancipation Act[2] as 'rash and ill-considered!'

The Ecclesiastical Titles Act[3] (besides being in strict accordance with legislation passed by our ancestors, in vindication of the royal supremacy, in pre-reformation times[4]) was but a slight extension of the provisions of the 24th section of that act, which provided that, 'if any person, other than the person thereunto authorised by law, shall assume or use the name, style, or title of archbishop of any province, bishop of any bishopric, or dean of any deanery, in England or Ireland, he shall, for every such offence, forfeit the sum of 100*l.*'

As the Church of Rome in England was, till 1850, governed by vicars apostolic, this enactment had not been violated in England.[5]

The Papal brief dated September 30, 1850, constituting an episcopal hierarchy in England, in place of the vicars apostolic, 'was couched,' says the 'Annual Register' for 1850,[6] 'in the same high and imperious language which the Papal Court had used in the plenitude of its mediæval power[7]: 'Of

[1] *Fifty Years of the House of Lords*, p. 58; *The House of Lords; a Retrospect and a Forecast*, pp. 226-228; *The House of Lords an Anomaly and a Danger*, p. 27.

[2] 10 Geo. IV. cap. 7.

[3] 14 & 15 Vict. cap. 60.

[4] See *e.g.* 16 Ric. II. cap. 5.

[5] It had been violated in Ireland.

[6] P. 196. ('History').

[7] The Papal brief, and Cardinal Wiseman's pastoral based upon it, will be found in the appendix to the *Annual Register* for 1850, pp. 405-414 ('Chronicle').

our own motion and certain knowledge, we decree and ordain that, in the kingdom of England, shall again flourish, according to the common laws of the Church, the hierarchy of bishops in ordinary, who shall take their titles from the sees *which we appoint by these presents*.'

'If the national sensibilities and the independence of the English people,' continues the 'Annual Register,'[1] 'were wounded by the Papal brief, the offence was tenfold aggravated by the style and tenor of the cardinal's pastoral':—'*We henceforth govern*, and shall continue to govern, *the counties of Middlesex, Hertford, and Essex*. . . . The great work then is complete; what you have long desired and prayed for is granted. Catholic England has been restored to its orbit in the ecclesiastical firmament, from which its light had long vanished.'

'The rescript,' said the Lord Chancellor,[2] 'declares the Roman Catholic religion to be *restored*, as the religion of the country, which had come again under the dominion of the Pope; and that all acts were null and void that attempted to interfere with the rescript.'

'There is no [other] country in Europe,' said Lord John Russell,[3] 'upon which the Pope would have attempted to pass this insult, which he has offered to the kingdom of England.' Mr. Disraeli pointed out[4] that the slight extension of the 24th section of the Catholic Emancipation Act only amounted to this:—'Now they are to be prevented from taking a territorial title, which has *not* been assumed by a prelate of the National Church.' The necessity for this extension arose from the fact that Pio Nono had taken very good care not to violate the provisions of sect. 24 of the Catholic Emancipation Act; the new sees took new names—not those of the existing dioceses of the National Church.

Sir Frederick Thesiger, I think, put the case for the bill in a nutshell when he said[5]:—'I would rather have the minimum of legislation than none at all.'

[1] P. 197. [2] Hansard's *Parl. Debates*, third series, vol. cxviii. 1282
[3] *Ibid.* vol. cxiv. 198. [4] *Ibid.* 257.
[5] *Annual Register* for 1851, p. 58.

'The surest way,' said the Lord President of the Council,[1] 'to keep alive the state of indignation in this country would be to show to this country a parliament determined to do nothing upon this subject.'[2]

The will of the people was reflected, with vehemence, in the People's House.

Leave to bring in the Ecclesiastical Titles Bill was given in the Commons, by a majority of 332.[3] That majority was increased on the second reading to 348,[4] and the second reading is generally regard as the crucial test. (The majority on the second reading of the second Reform Bill, which the Lords threw out—136—which Mr. Spender calls[5] 'a sweeping majority,' seems paltry by comparison.) Nevertheless, 'it was an unique occasion for the Peers to justify their existence, as a legislative body,'[6] by throwing the bill out!

The Queen, in her speech from the throne, said[7]:—'I thank you for the assiduity with which you have applied yourselves to the consideration of a measure framed for the purpose of checking the undue assumption of ecclesiastical titles, conferred by a foreign power. It gives me the highest satisfaction to find that, while repelling unfounded claims, you have maintained inviolate the great principles of religious liberty, so happily established amongst us.'

The Ecclesiastical Titles Act (1851) *Repeal Act*, 1871 (34 & 35 *Vict. cap.* 53)

'The act,' says the author of 'Fifty Years of the House of Lords,'[8] 'remained a dead letter on the statute book for twenty years.'

'From the moment the bill received the royal assent,' says Mr. Spalding,[9] 'it became a dead letter.'

[1] The Marquess of Lansdowne.
[2] Hansard's *Parl. Debates*, third series, vol. cxviii. 1067 (when moving the second reading).
[3] *Ibid.* vol. cxiv. 699 (395 to 63). [4] *Ibid.* vol. cxv. 618 (438 to 95).
[5] *The House of Lords*, p. 21.
[6] *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, LL.B., chap. xviii. p. 227.
[7] Hansard's *Parl. Debates*, third series, vol. cxviii. 1959. [8] P. 58.
[9] *The House of Lords; a Retrospect and a Forecast*, chap. xviii. p. 228.

And why? Because the penalty had to be sued for under the 38th section of the Catholic Emancipation Act, 1829 [1] (which restricted its enforcement to the direct initiative of the law officers of the Crown), or by a suit in a superior court, with the consent of the law officers of the Crown. The law officers of the Crown took no action themselves, and their consent was never given to a suit! [2]

'*Repealed, almost unnoticed,*' says Mr. Spalding.[3]

'The act was repealed,' says the author of 'Fifty Years of the House of Lords,' [4] 'by both Houses, *with hardly a protest.*'

These statements are equally incorrect.

The discussions on the repeal of the Ecclesiastical Titles Act lasted *for five years.* Commencing in 1867, and continuing through the intervening years, they led to no definite result till 1871!

Mr. Macevoy, an Irish Roman Catholic member, introduced, in 1867, a bill to repeal the Ecclesiastical Titles Act.[5] It caused such a flutter even amongst the Roman Catholic members that Mr. Macevoy said [6]:— 'The measure seems to have fallen on hon. members like a shell—almost like a Reform Bill!'

Lord Lyveden, a week later, moved, in the House of Lords, for an address to Her Majesty for a return of any actions brought under the Ecclesiastical Titles Act, intimating, at the same time, that he expected that the return would be '*nil*!' [7]

The prime minister, Lord Derby, assented to the motion, but declined to commit himself to the policy of repealing the act.[8] Earl Granville,[9] a Liberal of Liberals, remarked that 'the act did not really trench, in any way, on the religious liberties of our Roman Catholic fellow-subjects.' [10]

On May 14, 1867, Mr. Macevoy postponed the second

[1] 10 Geo. IV. cap. 7.
[2] See Hansard's *Parl. Debates*, third series, vol. cciv. 787.
[3] *The House of Lords, ubi supra.* [4] *Ubi supra,*
[5] Hansard's *Parl. Debates*, third series, vol. clxxxvi. 363.
[6] *Ibid.* 369. [7] *Ibid.* 706.
[8] *Ibid.* 710. [9] *Ibid.* 717.
[10] Compare the Queen's Speech at the close of the session of 1851, *supra.*

reading of his bill,[1] and two days later moved for, and obtained,[2] a select committee to inquire into and report upon the operation of the Ecclesiastical Titles Act, and section 24 of the Catholic Emancipation Act. On more than one occasion the House was adjourned or counted out;[3] but, on June 27, 1867, the select committee was nominated.[4] On July 22 the bill was withdrawn.[5] The select committee, of which Mr. Macevoy was himself chairman, decided to hear the evidence only of those favourable to repealing the act.[6]

The report, which was dated August 2, 1867, was only carried by the casting vote of the chairman, most of the divisions resulting in a tie. The votes on the crucial paragraphs of the report:—'Your committee recommend the repeal *both* of the Act 14 & 15 Vict. cap. 60, and of section 24 of the Act of 10 George IV. cap 7'—were equal: 'Ayes' 6, 'Noes' 6; 'whereupon the chairman declared himself with the "ayes."'[7]

The draft report of Mr. Walpole, the home secretary, which was negatived by a majority of one, stated as follows:—'Your committee have arrived at the conclusion that no practical grievance has been found to exist with reference to the operation of the Ecclesiastical Titles Act, either as regards the Roman Catholic bishops or as regards the Roman Catholic people. . . . . Upon a full review of the whole evidence, your committee can see no good reason for repealing or altering either the one or the other [enactment].'[8]

The Attorney-General for Ireland[9] was, unfortunately, unable to attend at the final sitting of the committee.[10] He would have supported the Home Secretary, and opposed Mr. Macevoy.

In 1863, Mr. Macevoy reintroduced his bill, but its scope

[1] Hansard's *Parl. Debates*, third series, vol. clxxxvii. 564–574.
[2] *Ibid.* 687, 688. [3] *Ibid.* 1097, 1363–6; vol. clxxxviii. 486–488.
[4] *Ibid.* vol. clxxxviii. 651, 652. [5] *Ibid.* 1873.
[6] *Ibid.* vol. clxxxix. 1339.
[7] Report of the Select Committee on the Ecclesiastical Titles and Roman Catholic Relief Acts (1867), together with the Proceedings of the Committee (No. 503), pp. iv, xi. [8] Report, pp. ix, x.
[9] The Right Hon. H. E. Chatterton, now Vice-Chancellor of Ireland.
[10] Hansard's *Parl. Debates*, third series, vol. cxc. 992.

was enlarged. It was now a bill to repeal, not only the Ecclesiastical Titles Act, but section 24 of the Catholic Emancipation Act,[1] being founded on the report of the select committee of 1867.

The scene now changes again to the House of Lords. The late Earl Stanhope moved for and obtained a select committee 'to inquire (1) into the operation of any laws as to the assumption of ecclesiastical titles in Great Britain and Ireland; and (2) whether any and what alteration should be made therein.'[2]

The Lord Chancellor[3] said[4]:—'I think, if there is any place where this subject can be considered dispassionately, and, I might almost say, in a judicial spirit, it is before a committee of this House.'

The select committee of the Lords, over which Earl Stanhope presided, reported on June 16, 1868.[5]

After reciting the 16 Richard II. cap. 5 (1392),[6] and the 28 Henry VIII. cap. 16, the select committee of the Lords decided that the first section of the Ecclesiastical Titles Act 'declares and enacts that which has always been common law, and asserted to be so and confirmed by statute, from a very early period. . . .' 'The Ecclesiastical Titles Act was considered by Parliament to be a measure, not of aggression, but of defence.'[7] 'No attempt has been made to levy the penalties under section 24 of the act of 1829, or under the act of 1851. The committee, however, are not of opinion that these enactments, and more especially the act of 1851, have been ineffectual. They were a plain and emphatic assertion by the legislature of the constitutional authority and supremacy of the sovereign. The committee are of

[1] Hansard's *Parl. Debates*, third series, vol. cxc. 992.
[2] *Ibid.* vol. cxci. 239-255.
[3] Earl Cairns.
[4] Hansard's *Parl. Debates*, third series, vol. cxci. 254.
[5] Earl Russell, the author of the Ecclesiastical Titles Act, concurred in the report.
[6] This enactment subjected to the penalties of *Premunire* 'any who pursue in the Court of Rome or elsewhere translations of prelates, without the king's consent or knowledge, processes, sentences of excommunication, bulls, &c.' 'to the destruction of the regality of our lord the king, his law, and all his realm.'
[7] This paragraph was inserted at the instance of the venerable Earl Russell.

opinion that a mere *repeal* of the section of the act of 1829 and of the act of 1851 would be open to misconstruction, and therefore *inexpedient*.'[1]

The report of the select committee of the Lords was presented on the very day that the bill of Mr. Macevoy stood for the second reading in the Commons.[2] He would not ask the House to go on with the second reading of the bill, if the Government promised him a day for it. This Mr. Gathorne Hardy,[3] the then home secretary, 'could not promise.' Sir James McKenna, whose name was on the bill, said:—'A division should take place without any further delay. I do not see why the legislation of this House should be stopped in reference to the opinion of the House of Lords.' Colonel Stuart thereupon moved the adjournment of the debate.

The House divided: 'Ayes' (for the adjournment) 142, 'Noes' 85; majority 57.[4]

In answer to a question, some days later, put to him by Mr. Macevoy, the Prime Minister (Mr. Disraeli) said:—'I find it quite impossible at present to fix any day.'[5]

Next day the order for the second reading was discharged and the bill was withdrawn.[6]

It was reintroduced in 1869 in the new parliament, with Mr. Gladstone in power; but it never got beyond the first reading.[7] On July 5 it was withdrawn.[8]

On May 6, while the Irish Church Bill was passing through the House of Commons, the Prime Minister (Mr. Gladstone), in answer to Mr. Macevoy, said[9]:—'I have to state that, as regards those who may hereafter be appointed dignitaries in the Disestablished Church, the enactments of the Ecclesiastical Titles Bill (*sic*) will render it illegal for them to assume the title of bishop or archbishop. That, *I am told*, is the effect of the act.'

[1] Report of the Select Committee on Ecclesiastical Titles, together with the Proceedings of the Committee, 1868 (No 348), pp. iv. v. (Ordered by the House of Commons to be printed.)

[2] Hansard's *Parl. Debates*, third series, vol. cxcii. 1696.

[3] Now Earl of Cranbrook.

[4] Hansard's *Parl. Debates*, third series, vol. cxcii. 1697.

[5] *Ibid.* 1856 (June 22, 1868).

[6] *Ibid.* 1982 (June 23, 1868).

[7] *Ibid.* vol. cxciv. 186–190.

[8] *Ibid.* vol. cxcvii. 1166.

[9] *Ibid.* vol. cxcvi. 262.

In committee in the Lords on the Irish Church Bill, Lord Colchester explained[1] that he wished to place the future Irish Protestant prelates on the same footing as the bishops of the Scottish Episcopal Church, who were expressly exempted from penalties by the Ecclesiastical Titles Act.[2]

The Earl of Granard, a Roman Catholic peer, protested,[3] in the name of 'religious equality,' against the exemption of Irish Protestant prelates, in the manner proposed.

'I agree, my lords,' said Earl Cairns,[4] 'with every word that has fallen from my noble friend (Lord Colchester) as to the absolute necessity of securing the prelates of the Protestant Church in Ireland against the penalties imposed by the Ecclesiastical Titles Act. As I understand the expressions of the noble earl opposite (Earl Granville), the view of Her Majesty's government is, that before the time arrives when the prelates of the Irish Church will be appointed in a different manner from that in which they now are, it will be the duty of the government to introduce a measure to free them from the pains and penalties of the Ecclesiastical Titles Act.' Lord Colchester's amendment was negatived.

Dissatisfied with the fate of his amendment, Lord Colchester renewed it in a more concise form on the report.[5]

'This point,' he said, 'ought to be decided at once, and not be left over for possible legislation.'

Earl Russell said he 'doubted whether if the bishops of the

[1] Hansard's *Parl. Debates*, third series, vol. cxcvii. 884.

[2] This exemption was, in my opinion, wholly unnecessary. Sir George Grey had remarked when the question of exempting the bishops of the Scottish Episcopal Church was under discussion (*Ibid.* vol. cxvii. 1025). that the Scotch bishops stood on a totally different footing, inasmuch as they did not hold their office *from* the appointment of a *foreign power*. Mr. Gladstone said that he agreed with the right hon. baronet that there was a distinction between bishops holding office by foreign authority and those who did not so hold it. He thought that Her Majesty's government on their own principles ought not to make the assumption of titles unlawful, except they were derived from a foreign authority.

[3] *Ibid.* vol. cxcvii. 884.

[4] *Ibid.* 885, 886.

[5] *Ibid.* 1493–4. 'And no persons, from time to time exercising archiepiscopal or episcopal functions in the said Church, or holding the office of dean therein, shall be liable to any penalty under the 14 & 15 Vict. cap. 60 for assuming the style or title of any place or district within which they exercise such functions or hold such office.'

Irish Protestant Church were to assume territorial titles, they would come within the operation of the Ecclesiastical Titles Act.'[1]

The late Earl of Harrowby said 'it was not a question of prelates nominated by a *foreign prince*.'[2]

The amendment was withdrawn.[3]

In moving the second reading of the Ecclesiastical Titles Act Repeal Bill in 1870, the Lord Privy Seal[4] said[5]:—'Circumstances have greatly changed. The Church of Ireland has been disestablished, and I contend that this circumstance amounts to a special reason for the repeal of the act of 1851. After the 1st of January next, apart from the titles of precedence enjoyed by particular individuals who hold bishoprics, and who are saved by a special clause in last year's act, bishops who may be appointed to that Church will come under the provisions of the act of 1851. It is impossible, then, as your lordships will see, that the law can remain unaltered. The bill does not propose to deal with the clause in the Emancipation Act of 1829. After next January the clause will not apply to any Irish bishop, for as there will be no bishoprics established by law in Ireland, there will be no titles which the bishops of any Church will be prohibited from assuming. As regards England, the people of this country are naturally sensitive on this matter, and I doubt whether any of your lordships would not feel some annoyance —though that word is not strong enough—if a Roman Catholic prelate took the title, for instance, of "Archbishop of Canterbury." The bill is carefully guarded both by a proviso and a preamble. The result will be that, while the penalty specially imposed by the act of 1851 will no longer be retained, the general law of the country, declaring that no *foreign* jurisdiction shall have any power or dominion in this country, will remain precisely as before.'

[1] Hansard's *Parl. Debates*, third series, vol. cxcvii. 1494. In this view I entirely agree.

[2] *Ibid.* 1495. The whole act of 1851 was aimed at the exercise of the *Papal* supremacy in the United Kingdom, to the derogation of the *Royal* supremacy.

[3] *Ibid.* 1496.

[4] The Earl of Kimberley.

[5] Hansard's *Parl. Debates*, third series, vol. cci, 1469-1476.

The venerable ex-chancellor, Lord St. Leonards,[1] moved the rejection of the bill[2] with a 'vigour, energy, and eloquence' which elicited the admiration of the Lord Chancellor[3] and of Earl Cairns.'[4]

In committee the bill was turned inside out by Earl Cairns, without any opposition on the part of any minister;[5] but when it was sent down to the House of Commons, Mr. Bruce, the then home secretary, succeeded in inducing that House to restore the bill to the original shape in which it was introduced into the House of Lords.[6] This sealed the fate of the bill. Earl Cairns 'could not conceive how the Home Secretary could fall into such a mistake.' The Lord Chancellor admitted that 'there were several of those affected who preferred the words of Earl Cairns.'

The Earl of Kimberley said that 'under the circumstances Her Majesty's government would not ask their lordships to agree to the Commons' amendments.' Order of the day discharged. Bill withdrawn.[7]

In 1871 the Ecclesiastical Titles Act Repeal Bill was, in the first place, introduced into the Commons. The Attorney-General[8] made a speech similar to that of Lord Kimberley in the previous year, relying on the necessity of protecting the Irish Protestant prelates as a ground for repealing the act:—

'The Roman Catholic Emancipation Act would remain in force, and under it Roman Catholic bishops would be prohibited from assuming titles held by prelates of the Church of England.'[9]

In moving the rejection[10] of the bill I endeavoured to show that the idea that the Irish Protestant prelates would be liable to be prosecuted for the assumption of territorial titles was baseless; 'that apprehended danger was purely imaginary.'[11]

[1] Formerly Sir Edward Sugden.
[2] Hansard's *Parl. Debates*, third series, vol. cci. 1476–1480.
[3] *Ibid.* 1489. [4] *Ibid.* 1483. [5] *Ibid.* vol. ccii. 1300–1302.
[6] *Ibid.* vol. cciii. 1593–1598. [7] *Ibid.* 1683–1684.
[8] Sir Robert Porrett Collier, afterwards so unhappily involved by Mr. Gladstone in the 'Collier job' controversy.
[9] Hansard's *Parl. Debates*, third series, vol. cciv. 780–783.
[10] *Ibid.* vol. cciv. 783–788. [11] *Ibid.* 784.

I have before me the division list,[1] from which it appears that the following ex-Ministers of the Crown voted with me :—

The Right Hon. Benjamin Disraeli, the Right Hon. Sir Michael Hicks Beach, the Right Hon. H. Lowry Corry, the Right Hon. Edward Pleydell Bouverie, the Right Hon. J. W. Henley, the Right Hon. Gerard Noel, the Right Hon. Sir William Hart Dyke, the Right Hon. Earl Percy, Viscount Crichton[2] and Sir Graham Montgomery.

The government were in such perplexity as to the proper wording of the bill that they actually themselves arrested its progress in the Commons and moved for a select committee upon it.[3] The debate was adjourned, but the motion, on a subsequent day, was agreed to.[4] Mr. Gladstone said,[5] in answer to a question of mine, that he considered the select committee 'fairly constituted,' although 'of the eleven members only two objected, on principle, to the repeal of the act.'

The select committee reported on May 26,[6] and on June 12 the bill was recommitted to a committee of the whole House.[7]

I immediately moved to report progress, and was supported by 66 members.[8] In addition to Sir Michael Hicks Beach, Mr. Henley, Mr. Noel, Viscount Crichton and others, I was supported[9] by Lord George Hamilton, Sir Rainald Knightley (now Lord Knightley), Sir Charles Adderley (now Lord Norton), the Hon. George Liddel (now Earl of Ravensworth), Viscount Mahon (now Earl Stanhope), Viscount Sandon (now Earl of Harrowby), Lord Garlies (now Earl of Galloway), and the Right Hon. James Lowther.[10]

I then proposed to confine the repeal of the Ecclesiastical Titles Act to Ireland, which was the logical outcome of the Irish Church Act, and would have protected the Disestablished Church, if necessary. Sir Robert Fowler 'told' with me. In addition to several of those already named, I was supported by

[1] Divisions, session 1871 (Feb. 23), p. 19 (printed by order of the House of Commons).
[2] Now Earl of Erne.
[3] Hansard's *Parl. Debates*, third series, vol. ccix. 1264.
[4] *Ibid.* 1359.
[5] *Ibid.* vol. ccvi. 1117.
[6] *Ibid.* 1324.
[7] *Ibid.* 1959.
[8] *Ibid.* 1960.
[9] Divisions, 1871, p. 271 (June 12, 1871).
[10] Hansard's *Parl. Debates*, third series, vol. ccvi. 1960, 1961.

Mr. Henry Cecil Raikes (afterwards chairman of committees and postmaster-general), Mr. Rowland Winn (afterwards Lord St. Oswald), Mr. J. G. Talbot, M.P. for Oxford University, and the Right Hon. Edward Strathearn Gordon (afterwards lord advocate and then Lord Gordon, a lord of appeal in ordinary).

Lord Colchester, in the Upper House, said[1]:—'Her Majesty's ministers are introducing an imperial remedy to meet special Irish difficulty.'

Earl Stanhope said[2]:—'The act would probably have remained unrepealed but for the fact, which could not have been foreseen at the time of its passing, that some bishops of our own persuasion would come under its provisions.'

Lord Hatherley,[3] Mr. Gladstone's lord chancellor, closed the debate with an eloquent vindication of the policy of passing the Ecclesiastical Titles Act,[4] which he had had charge of in 1851 (as solicitor-general) in the House of Commons.[5]

The Public Worship Regulation Act, 1874 (37 & 38 *Vict. cap.* 85)

'Another specimen of panic legislation, the famous bill to put down ritualism, originated in the House of Lords.'[6]

It should be remembered that this measure was introduced into the House of Lords by the Archbishop of Canterbury, the spiritual chief of the Church: and that he stated,[7] when introducing it, that he had been 'requested *by his right rev. brethren* to bring the subject under their lordships' notice.'

No fewer than 19 out of the 26 Spiritual Peers supported the principle of the bill on the only occasion when a division was taken upon it, only one voting against it.[8]

The bill therefore came before the House of Lords with the whole weight of the episcopal bench, to whom the govern-

[1] Hansard's *Parl. Debates*, third series, vol. ccvii. 1333.
[2] *Ibid.* 1400.
[3] Formerly Vice-Chancellor Page-Wood.
[4] Hansard's *Parl. Debates*, third series, vol. ccvii. 1400, 1401.
[5] See *Ibid.* vol. cxvi. *passim*.
[6] *Fifty Years of the House of Lords*, p. 58.
[7] Hansard's *Parl. Debates*, third series, vol. ccxviii. 786.
[8] See the Division Lists, *Ibid.* vol. ccxix. 952, 953; 'Contents' 137, Not-con'ents' 29; majority 108.

ment of the Church was confided, and who were the constitutional representatives of the clergy, the first estate of the realm.

Does the author of 'Fifty Years of the House of Lords' suggest that the lay peers should have denied the very reasonable request of the Lords Spiritual, that ecclesiastical discipline should be strengthened by the legislature of the country?

'Surely,' as Lord Salisbury said,[1] 'if there be any duty which the episcopal bench has to discharge, it must be to *take the initiative* in a matter specially relating to the government of the Church.' And he added:—'My lords, no one can say that this bill has been introduced without a cause. No one can deny that the lawlessness does exist, and it is difficult to condemn it in language which is too strong, if you only consider the nature of the offence.'

The bill was read a second time in both Houses,[2] without a division—the most convincing proof that public opinion demanded that 'further regulations should be made for the administration of the laws relating to divine service.'[3]

The Public Worship Regulation Act has become, practically, a dead letter. Why? Because, in the first place, the bishop of the diocese has absolute power, under the act, of vetoing the proceedings—a power which has been constantly exercised; and, in the second place, the inhibition pronounced by the judge appointed under the act can be (and has been) enforced by process of *significavit* (under the 53 George III. cap. 127) to the Court of Chancery, for a writ *de contumace capiendo*;[4] and the sternest foe of ritualism does not like to make a martyr of the contumacious clergyman by lodging him in gaol.

County Courts

I have already dealt with some of the allegations of the opponents of the House of Lords in relation to this subject.[5]

[1] *Annual Register* for 1874, p. 74 ('History'); Hansard's *Parl. Debates*, third series, vol. ccxix. 51.

[2] House of Lords: Hansard's *Parl. Debates*, third series, vol. ccxix. 65; House of Commons, *Ibid.* vol. ccxxi. 89. [3] Preamble of the act.

[4] See Cripps's *Law of the Church and Clergy* (6th edit.), book i. chap, iv. pp. 45–49. [5] See Chap. XIX. (William IV.), *supra*.

I cannot discover that any bill for the establishment of county courts in England was sent up to the Lords from the Commons between the years 1833 and 1842. The bill of 1833 originated, as we have seen, in the Lords.

In Pollock's 'Practice of the County Courts'[1] we read:—

'From 1842 to 1846 a measure for the establishment of local courts throughout the kingdom was considered from time to time by parliament.'

It is a little unfortunate for the contention of Mr. Bowen-Graves, Mr. Spender, and the author of 'Fifty Years of the House of Lords,' that the very first of these measures,[2] consisting of 100 clauses,[3] *originated* in the House of Lords, and passed that House without a division.[4] Lord Brougham[5] expressed a natural 'preference' for his own bill of 1833, but he 'approved of the bill, as a step in advance in the right direction, and a very important and valuable step.'

The fate of the bill in the House of Commons was different. 'The bill,' said Sir James Graham, the home secretary of the Conservative government, 'has come down from the Lords with the sanction, if not the undivided opinion, of the great legal authorities in that House, and the majority of their lordships.' The bill was *dropped*, however, *in the Commons*, on account of 'the lateness of the period of the session at which it had been sent down to that House from the Lords.'[6]

The Conservative government introduced their County Court Bill, in 1843, into the House of Commons first.

The home secretary, Sir James Graham, got leave to introduce the bill on April 26. 'The bill,' he said,[7] 'is the same in principle as that of last session; the machinery will be nearly the same.'

The bill was brought in and read a first time, but it never got further. It was *dropped in the Commons*.

[1] 9th edit. introduction, p. xxvi.
[2] The County Courts Bill, 1842.
[3] Hansard's *Parl. Debates*, third series, vol. lxv. 1074.
[4] *Ibid.* vol. lxiii. 1598; vol. lxv. 224, 487, 630.
[5] *Ibid.* vol. lxv. 631.
[6] *Ibid.* 1183, 1186, 1187.
[7] *Ibid.* vol. lxviii. 973; and see vol. lxvi. 221, 222.

In 1844 the County Court Bill was reintroduced in the Commons,[1] but it never got beyond the report.[2] It was *dropped in the Commons.*

Mr. Shaw, recorder of Dublin, informed Sir James Graham that he 'would get a good guide, in legislating on the subject, by a reference to the practice of the Irish Civil Bill Courts, which he believed worked well and satisfactorily in every part of the country.'[3]

In Pollock's 'County Court Practice' we further read:—

'In 1845 the 8 & 9 Vict. cap. 127, to extend the jurisdiction of courts of request and other courts, was passed.'

This measure *originated* in the House of Lords, and under the name of the Small Debts Bill was passed through the second reading, the committee stage, and the third reading, at one sitting, the standing orders being suspended for that purpose.[4]

Again, we read in Pollock's 'County Court Practice'[5]:—

'Difficulties having arisen, the statute 9 & 10 Vict. cap. 95 was passed in 1846, and by orders in council of March 9, 1847, county courts were established throughout the kingdom, except in the City of London.'

This bill, under the name of 'The Small Debts Bill,' *originated* in the House of Lords. It was introduced there by the lord president of the council in Sir Robert Peel's administration,[6] on June 15, 1846, and read a first time.[7] A change of government occurred; Lord John Russell succeeded Sir Robert Peel as prime minister; but the new Lord Chancellor[8] took the bill up, and carried it through the second reading in July,[9] and the remaining stages in August.[10] There was no division on the bill in the House of Lords. The only divisions were in the House of Commons.[11]

[1] Hansard's *Parl. Debates*, third series, vol. lxxiii. 1671–1674.
[2] *Ibid.* vol. lxxiv. 195, and vol. lxxv. 154.
[3] *Ibid.* vol. lxiii. 1673.
[4] *Ibid.* vol. lxxxi. 1018–1020.
[5] *Ubi supra.*
[6] The Duke of Buccleuch.
[7] Hansard's *Parl. Debates*, third series, vol. lxxxvii. 438, and vol. lxxxviii. 110.
[8] Lord Cottenham.
[9] Hansard's *Parl. Debates*, third series, vol. lxxxviii. 109–113.
[10] *Ibid.* 279–281, 349.
[11] *Ibid.* 924, 925.

'By the County Courts Act, 1846,' says Mr. Pitt-Lewis,[1] 'the jurisdiction of the old county courts was revived.'

It is quite clear, from the above résumé, that the Peers were chiefly instrumental in re-establishing the court in which the Thanes sat in bygone ages.

The Court of Admiralty

'The Lords threw out the bill, extending the jurisdiction of the Court of Admiralty in 1839: an act, which Lord Melbourne, who was not usually given to invective, declared "was one of the most disreputable and unprovoked acts of power that ever I knew to be exercised."'[2]

The expression was not used by Lord Melbourne till Lord Lyndhurst had reviewed, critically, the events of the session, on August 28, and alluded to this bill in the following terms:—

'Another objectionable measure was the Admiralty Bill; the salary of the judge presiding in that court was to be increased to 4,000*l.* a year, and he was to be allowed to sit in the House of Commons. I wish to speak with every respect of the learned gentleman who at present fills that office; but it is notorious that he is a keen political partisan, and most devoted and inflexible in his adherence to the present government. Other alterations of an extensive character were proposed to be effected by the bill, and at a period of the session when it was impossible for your lordships to give them due consideration; your lordships, *therefore*, rejected the bill.'[3]

When Lord Lyndhurst moved the rejection of the bill,[4] he did so mainly on the ground that it was 'impossible' to give the bill 'due consideration' on August 18, when the Lord Chancellor first called the attention of the House of Lords to it.[5]

Parliament was prorogued on August 27, just a fortnight

[1] *Complete County Court Practice*, 4th edit. (1890), book i. chap. i. p. 9.

[2] *Fifty Years of the House of Lords*, p. 56. See Hansard's *Parl. Debates*, third series, vol. l. 526.

[3] *Ibid.* 513.

[4] *Ibid.* 236–238.

[5] See *Ibid.* 234–236.

after! The bill had slipped through the second reading in silence.[1]

The government had waited six years before acting upon the report of a committee of the House of Commons, and then wanted to rush the bill through parliament, in the last days of the session.

In the House of Commons Mr. Hume said[2]:—

'I do not like that the Liberal party should be reproached with having increased the salary of this office when filled by one of their friends. If the increase was fit to be made, it ought to have been made when preceding judges were in office.'

Mr. Hume nearly carried an amendment to exclude the judge of the Admiralty Court from a seat in the House of Commons in future. It was only lost by 10 votes.[3] Lord Brougham, the Liberal ex-chancellor, who supported Lord Lyndhurst's motion for the rejection of the bill in the Lords,[4] was as strongly in favour of the exclusion of the judge of the Admiralty Court from a seat in the House of Commons as Mr. Hume.

Twice over, in the House of Commons attempts were made by Liberal economists to fix 3,000*l.* as the judge's future salary, instead of 4,000*l.*[5]

The then salary was 2,500*l.*,[6] so that the increase would have been 1,500*l.*, and this to a political supporter! Lord Brougham mentioned[7] in the Lords—what appears to be almost incredible—that this proposed salary of 4,000*l.* a year was 'for little more than twenty-eight days' work, for that was the period during which the court sat!'

The Court of Chancery

I have already dealt with this subject in the reign of King William IV.[8]

Lord St. Leonards introduced the 'Master in Chancery

[1] Hansard's *Parl. Debates*, third series, vol. l. 182.
[2] *Ibid.* vol. xlix. 350.
[3] *Ibid.* 1126. 'Ayes' 51, 'Noes' 61. (The judge of the Admiralty Division is now excluded.)
[4] *Ibid.* vol. l. 238–241. [5] *Ibid.* vol. xlix. 1107–1112, 1272.
[6] By the Lord Chancellor, *Ibid.* vol. l. 235. [7] *Ibid.* 239.
[8] See Chap. XIX. *supra.*

Abolition Bill' into the House of Lords on April 19, 1852.[1] The bill passed through all its stages in the House of Lords without a division,[2] and was sent down to the House of Commons, where a division took place.[3] The bill received the royal assent the day before the prorogation of Parliament.[4] It is the 15 & 16 Vict. cap. 80.

But a much larger measure of reform was carried in the same session and *originated*, also, in the House of Lords.

Lord St. Leonards introduced the 'Improvement of the Jurisdiction of Equity Bill' on the day on which the 'Abolition of Masters in Chancery Bill' was read a second time,[5] carried it through all its stages without a division,[6] and sent it down to the House of Commons. It eventually received the royal assent on the day that parliament was prorogued.[7]

It is the 15 & 16 Vict. cap. 86. This enactment remodelled the whole practice and course of proceeding in the Court of Chancery.

A third bill was introduced in the Commons entitled 'The Suitors in Chancery Relief Bill.' It was sent up to the Lords, but it was found so full of flaws, that a new bill—'The Suitors in Chancery Relief (No. 2) Bill'—was substituted for it,[8] and sent down *by the Lords* to the Commons, and passed into law. It received the royal assent on the same day as the bill for the Improvement of the Jurisdiction of Equity.[9] It is the 15 & 16 Vict. cap. 87. It abolished several sinecure offices, substituted payment by salary for payment by fees, and afforded increased facilities for the despatch of the business of the Court of Chancery.

The first Common Law Procedure Act, also initiated by the Lords, was passed in the same session.

It is not surprising that Her Majesty, in her Speech from the Throne, described these measures as 'a valuable boon conferred on the community at large.'[10]

[1] Hansard's *Parl. Debates*, third series, vol. cxx. 798–804.
[2] *Ibid.* vol. cxxi. 418, 419, 1172, 1263.
[3] *Ibid.* vol. cxxii. 544.
[4] *Ibid.* 1392.
[5] May 10, 1852. *Ibid.* vol. cxxi. 418.
[6] *Ibid.* 890, 891, 1172, 1238-1291.
[7] *Ibid.* vol. cxxii. 1423.
[8] *Ibid.* 1392.
[9] *Ibid.* 1423.
[10] *Ibid.* 1428.

To the Law Lords, and especially to the Lord Chancellor, that boon was mainly due.

The Common Law Courts

I have already shown[1] how zealous the House of Lords was, in the reign of King William IV., in 'simplifying the procedure of the common law courts in England.'

The Common Law Procedure Act of 1852,[2] founded on the report of the Commission appointed to inquire into the courts of law and equity, *originated* in the House of Lords.[3] So did[4] the Common Law Procedure Act of 1854.[5]

The Final Court of Appeal for the United Kingdom

To show to what straits the writer of the 'Small Work' is reduced, I may point out that he actually casts in the teeth of the House of Lords the preservation of their own appellate jurisdiction! 'Not even their most devoted panegyrist,' he says,[6] 'would venture to claim for the House, which in 1875 succeeded in compelling the late government to abandon the attempt 'to complete the Judicature Act of 1873, any merit as an advocate of legal and judicial reform.'

This is a very choice *morceau*. It displays the crass ignorance of the writer in a signal manner. The House of Lords simply followed (as we shall see[7]) the movement of public opinion in England, Ireland, and Scotland, which demanded the repeal of the twentieth section of the Supreme Court of Judicature Act, 1873,[8] and the preservation of the House of Lords, as the Final Court of Appeal for the United Kingdom.

II. 1893–1894

1. *The Home Rule Bill*[9]

It is well known that Mr. Gladstone's recently announced hostility to the House of Lords arises solely from their rejec-

[1] See Chap. XIX. *supra*. [2] 15 & 16 Vict. cap. 76.
[3] Hansard's *Parl. Debates*, third series, vol. cxix. 179–182.
[4] *Ibid.* vol. cxxx. 1322. [5] 17 & 18 Vict. cap. 125. [6] P. 56.
[7] Chap. XXI. *infra*. [8] 36 & 37 Vict. cap. 66.
[9] Technically known as 'The Government of Ireland Bill,'

tion of the Home Rule Bill, on the success of which he had set his heart as the crowning act of his life, before retirement from the cares of office.

Even if we strike out the names of all those who have failed to attain celebrity, there remains an eminent body of men—sufficient to inflict a crushing defeat on the bill—who in any circumstances would find their way into a second chamber; statesmen like Lord Salisbury, the Duke of Argyll, and the Duke of Devonshire; ex-officials of the calibre of the Earl of Cranbrook, the Earl of Northbrook, the Duke of Rutland, Lord Knutsford, Viscount Cross, Lord Carlingford, Earl Cowper, and the Marquess of Lothian; successful colonial governors such as the Earl of Derby (who voted as Lord Stanley of Preston), the Earl of Jersey, and the Earl of Onslow; distinguished lawyers like the Earl of Selborne, Lord Ashbourne, Lord Esher, Lord Field, Lord Halsbury, Lord Hannen, Lord Macnaghten, Lord Morris, Lord Shand, Lord Watson, and Lord Grimthorpe; administrators of the type of Lord Basing, Lord Lingen, and Lord Sandford; men of science, such as Lord Kelvin, Lord Rayleigh, and Lord Walsingham; distinguished commanders like Lord Alcester, the Earl of Clanwilliam, Lord Methuen, and Lord Hood of Avalon; county magnates and leaders of local opinion of the influence of the Duke of Abercorn, the Duke of Beaufort, the Marquess of Bath, Earl Cadogan, the Earl of Coventry, Earl Fitzwilliam, Earl Fortescue, the Marquess of Waterford, and the Marquess of Londonderry; personages of the eminence of Lord Armstrong, Lord Masham, Lord Iveagh, and Lord Rothschild, in financial, industrial, and commercial undertakings; of Lord Stalbridge, Lord Colville of Culross, and Lord Mountstephen, in the development of railway enterprise; of the Duke of Richmond in the advancement of agriculture; of the Duke of Westminster in philanthropical work; of the Earl of Carlisle in the promotion of artistic culture; of Lord Wantage in the volunteer movement; of Viscount Halifax in ecclesiastical circles; and of the Earl of Wemyss, the Earl of Dunraven, and Lord Lamington—men of mark in political and social life. The premier earl, Lord Shrewsbury, and

Lord Dacre (1807), better known as Mr. Brand, Speaker of the House of Commons, afterwards created Viscount Hampden,[1] voted against the Home Rule Bill, as did the venerable Lord Ebury (aged 92), who was a privy councillor when the Queen came to the throne, and who sat in the House of Commons as the Hon. Robert Grosvenor as far back as 1822, when he was returned for Shaftesbury; and the Duke of Northumberland (aged 83), who, as Lord Lovaine, was elected for a Devonshire borough in 1831.[2]

There are many others who, in particular localities, would carry almost as much weight. All the prelates were in the majority, which contains such names as Benson, Temple, Westcott, and Stubbs.[3]

Exclusive of the six princes of the blood (who never take part in political divisions), and eleven minors, the House of Lords consisted of 556 members (two Irish representative peers being also peers of the United Kingdom). Of these no fewer than 460 voted either for or against the Home Rule Bill, thus establishing a record.

Mr. Gladstone had been prime minister from 1868 to 1874, from 1880 to June 1885, from February to August 1886, and from 1892 till the rejection of the Home Rule Bill, and had freely recommended his supporters for peerages.

An analysis of the voting on the second reading of the Home Rule Bill in the House of Lords shows that of the peers who first sat in parliament on Mr. Gladstone's recommendation, or whose progenitors owed their advancement to Mr.

[1] Sir William Harcourt, oblivious of this fact, said on St. Valentine's Day at Portsmouth: 'When others shrunk away, Lord Hampden was, to the last, a faithful friend, and a great support to Mr. Gladstone and the Liberal party.'

[2] See the *Times*, September 11, 1893.

[3] In judging of the vote of the English prelates against the Home Rule Bill, it must be borne in mind that intimate relations exist between the Irish bishops and the English ones; and the English ones would, indeed, have been deaf to the cry of distress from the Church of Ireland if they had refrained from saving it from the despotism of the peasant priests. The bulk of the money of the Irish Church is invested in the land of the Protestant proprietors; and the non-payment of rent, which must have followed the enactment of Home Rule, would have gratified the feeling of 'sweet revenge' on the part of the Celtic-Roman population, by destroying, at one fell swoop, the Church of Ireland and the Protestant proprietors.

Gladstone, the majority found themselves unable to support his schemes for the disruption of the empire. During Mr. Gladstone's first administration (1868–74), twenty-three peerages were created, which still confer seats in the House of Lords. The present holder of one of these—Lord O'Hagan—is a minor, and therefore is not yet entitled to vote. Of the remainder, seventeen took part in the division—6 being for and 11 against the bill, and 5 were absent, unpaired. The six who voted for the second reading were the Marquess of Breadalbane, Lord Acton, Lord Greville, Lord Sandhurst, Lord Aberdare, and Lord Coleridge; the eleven against it being Lord Lawrence, Lord Castletown, Lord Wolverton, the Earl of Selborne, Lord Cottesloe, the Earl of Normanton, Lord Carlingford, the Earl of Southesk, Lord Rollo, the Earl of Listowel, and Lord Napier and Ettrick. The absentees were Lord Penzance, Lord Emly, and Lord Moncrieff (whose ages were 77, 81, and 82 respectively), Lord Howard of Glossop, and Lord Robartes. The twenty-six peerages which date from Mr. Gladstone's second administration (1880–85) pronounced even more decisively against Home Rule, the only supporters of the measure out of this batch being Lord Brabourne, Lord Reay, Lord Northbourne, Lord Monkswell, and Lord Hobhouse, while no fewer than seventeen voted with the 'Not Contents.' Lord Ampthill, the Marquess of Tweeddale, the Earl of Howth, Lord Hothfield, Lord Alcester, Lord Tennyson, Viscount Hampden, Lord Monk-Bretton, the Earl of Arran, Viscount de Vesci, Lord Herries, Viscount Powerscourt, Lord Henley, Lord Rothschild, Lord Revelstoke, Lord Lingen, the Duke of Fife (who first entered the House of Lords by virtue of the earldom of the United Kingdom conferred in 1885), and Lord Tweedmouth[1] paired against the bill. The present holder of the Strathspey peerage (the Earl of Seafield) is a minor. Field-Marshal Viscount Wolseley and Lord Derwent, who also went up to the House of Lords under Mr. Gladstone's auspices, did not take part in the

[1] Father of the senior Gladstonian 'whip,' then Mr. Marjoribanks, now Lord Rosebery's Lord Privy Seal and Chancellor of the Duchy of Lancaster.

division. So far from operating to his advantage, therefore, *the lavish creation of peers during Mr. Gladstone's first and second administrations has simply improved the Unionist position in the Upper House.* Of the forty-seven noble Lords whose names were submitted by Mr. Gladstone to the Queen before Home Rule rent the Liberal party in twain, eleven only followed Lord Spencer into the 'Contents' lobby, while twenty-nine either voted or were paired against the Government. Out of the seven peers who entered the House in 1886, five—Lord Herschell, Lord Kensington, Lord Hamilton of Dalzell, Lord Brassey, and Lord Thring—voted for the bill, and one, Lord Stalbridge, against it, Lord Burton abstaining. Lord Battersea, Lord Playfair, Lord Stanmore, Viscount Drumlanrig, Lord Swansea, Lord Overtoun, Lord Farrer, and Lord Hawkesbury, all of whom have entered the House of Lords since Mr. Gladstone took office in August 1892, discharged their obligation by assisting to swell the minority. To sum up, although sixty-two of the peers now occupying seats in the House of Lords owe their present position either partially or wholly to the member for Midlothian, twenty-four only could reconcile it with their conscience to swallow Home Rule. On the other hand, little as some of the older Liberals relished placing themselves in conflict with their old political friends and associates, twenty-nine voted, and one was paired, against the bill. The irony of the situation is that a not inconsiderable number of the men who entered the House of Lords during Mr. Gladstone's first and second administrations were Irish and Scotch peers who were unable to obtain a place in the lists of representative peers. Peerages of the United Kingdom were conferred upon them mainly for their staunch Liberalism; and yet they have been, with very few exceptions, obliged to part company from their former leader! *Half* of the peers who formed *the minority* of forty-one were *paid government officials!* The true nature of the Gladstonian vote will, however, be better appreciated when it is realised that out of the whole forty-one peers who were in favour of Home Rule, thirty-five were either placemen or men who have to thank Mr. Gladstone for their peerages![1]

[1] See the *Times* of September 11, 1893.

An analysis of the division lists on the third reading of the Home Rule Bill in the House of Commons shows that the majority of 303 (including tellers) was composed of 184 members representing constituencies in England and Wales, 39 Scotch members, and 80 Irish members, while the minority of 269 (also including tellers) consisted of 229 English and Welsh members, 17 Scotch members, and 23 Irish members. The list of pairs included 92 members, 37 English and nine Scotch being for the bill, and 40 English and six Scotch against it. The net result of the division, therefore, taking into account the members who were paired, as well as those who actually voted, was: For the third reading 349, against 315. This gives a total of 664. The six members whose names do not appear in either of the division lists or the list of pairs, are the Speaker, who never votes unless to determine a tie, Messrs. Wallace and Rathbone, who deliberately abstained, and Sir E. Watkin, Baron H. de Worms, and Mr. J. Wilson (Durham), who were absent, unpaired. Of the 495 English and Welsh members, 490 were accounted for, 221 being in favour of the measure, and 269 against it; while of the 72 Scotch members, 71 voted, 48 being in favour of the measure and 23 against it. Every one of the Irish members (103 in all) voted, 80 for the bill and 23 against it. The final decision of Great Britain, therefore, was as follows:—

For the bill	269
Against it	292
Majority against it	23

The voice of England and Wales is even more conclusive, the figures being:—

For the bill	221
Against it	269
Majority against it	48[1]

If Wales be deducted from England and Wales, the majority against the Home Rule Bill of *English* members reaches the grand total of 74.

'The House of Lords,' says Mr. Lecky,[2] 'is exercising not

[1] *Times*, Monday, September 4, 1893.

[2] *Hist. of England in the Eighteenth Century*, vol. iv. chap. xv. p. 299.

only a legitimate, but *a most useful function*, when it throws out measures of the House of Commons, which it believes to be contrary to the wishes of the people, and thus compels ministers either to abandon them, or to give the people an opportunity of expressing their opinion at an election.'

As a matter of fact, the rejection of the Home Rule Bill has placed the House of Lords in an impregnable position, having bound up its existence inseparably with the highest interests of the Irish Loyalists, and the most cherished convictions of the people of England; and if the House of Lords is true to itself, nothing but civil war, or revolution, can ever destroy it.

Sooner or later, the admission made during the debates on the Home Rule Bill, that, if population be taken as the basis of representation the proportion of members, to which Ireland is entitled, must be reduced to 80 from 103, will lead to the policy of the House of Lords being triumphantly vindicated even on the principle of *Vox populi, vox dei*. It is because the House of Lords has vindicated the rights of the *real* majority of the nation that it stands higher to-day than it has ever done before.

Sir T. Wemyss Reid[1] rings the changes upon 'the nation' and the 'national will' in a very 'nauseous and ridiculous' manner:—'Unfortunately for itself the House of Lords at present lies athwart the path of the nation.' So far from this being the case, the House of Lords represents 'the nation' and 'the national will,' and the House of Commons does not.

Away, then, with this silly talk about 'thwarting the national will,' 'five hundred against a nation!' Why, the *reductio ad absurdum* of the whole thing is, that Sir T. Wemyss Reid ignores the existence of any other Tories except the Peers! The 'nation,' forsooth, is on one side, and the House of Lords on the other. The Tories, outside the House of Lords, form, of course, no part of the 'nation!' The House of Lords cannot, at the same time, represent the Tory party, and represent nothing but itself!

[1] In the *Nineteenth Century* for April, 1894 (No. 206), pp. 553–559.

Mr. Goschen dealt, in his incisive way, at Edinburgh in October 1893, with the misstatement that the House of Lords 'represented nobody but itself'[1]: —

'Mr. Gladstone goes on to say, "on one side we have a body of 500 gentlemen, on the other we have the House of Commons representing six millions of electors. Can these 500 peers for one moment venture to stand in the way?" But does any intelligent elector swallow the suggestion that there are six millions of the electors who are opposed to the action of the Lords? Is it a case of six millions against 500? No; on the one side are 2,850,000 electors, on the other side are 2,700,000 electors in round numbers. The difference is 155,000 on the total, which represents two and a half upon the electorate.' (Laughter and cheers.)

If we compare Mr. Gladstone's concessions with those made to Grattan in 1782, and which Mr. Parnell told his constituents were the minimum he would accept: first, the dependency of the Irish army on the Irish parliament; secondly, the exclusion of the administrative powers of the English privy council; thirdly, the restoration of the judicial powers of the Irish House of Peers, as the final court of appeal from the Irish courts; fourthly, the abolition of the legislative power of the imperial parliament; we find that not one of these terms was embodied in the Home Rule Bill. What 'finality' could there be in that measure?[2]

Mr. Arnold White, in 'The English Democracy,'[3] observes:—'The proposal contained in the 10th clause of the bill, whereby the Irish members were to exercise power over British taxation, education, and trade, while similar powers over Irish affairs were denied to England and Scottish representatives, was carried in the House of Commons by a good majority.

[1] *Times*, October 4, 1893. It is strange to find so eminent a leader of the people as Sir William Harcourt treating his followers at the 'Budget dinner' to a *réchauffé* of the cry, 'The House of Lords represents no one but itself.' *Daily News*, August 2, 1894.

[2] See *Ipse Dixit, or the Gladstonian Settlement of Ireland*, by Thomas E. Webb, LL.D., Q.C., Regius Professor of Laws and Public Orator in the University of Dublin (1886), pp. 14, 15; *Grattan's Speeches*, vol. i. pp. 127–129.

[3] Chap. vii. *The House of Lords*, p. 107.

No impartial person, however, not blinded by partisan feeling, could hesitate in condemning such a proposal, and, probably, nine-tenths of the supporters of the government among the electors were sincerely grateful to the House of Lords for rescuing Great Britain from so humiliating a badge of inferiority being fastened upon her. Nor can there be reasonable doubt that the government, in consequence, lost weight in the constituencies from the very circumstance that they gained a majority in the House of Commons on a matter detestable to patriotic Englishmen and Scots.'

The Home Rule Bill creates a legislative council and a legislative assembly for Ireland, terms evidently imported from the British colonies; and gives an appeal to the privy council instead of to the House of Lords. Ireland, in short, is treated as a colony, which is absurd. Ireland is not and never can be a colony; she is *an integral part of the mother country*. It is only fourteen miles from Fair Head in Ireland to the Mull of Cantyre in Scotland, and sixty miles from Holyhead to Kingstown. You cannot treat an island thus moored to Great Britain like a colony a thousand miles off. The imperial parliament was to be supreme, but the supremacy was to be like that of the imperial parliament over one of the British self-governing colonies, no supremacy at all.

Mr. Parnell was logical in insisting that genuine Home Rule demanded that there should be no veto on the Irish legislature except that of the Crown, a veto not exercised for the last two centuries, i.e. since the days of William III.

The objection which, no doubt, struck Englishmen most forcibly was a very practical one, that the bill, if it became law, would place Ireland under the sway of men who had been condemned, for various misdemeanours, by so impartial a tribunal as 'the Parnell Commission.'

I see by the *Derry Journal* of February 23, 1894, an article headed, 'The Useless House of Lords,' by Mr. Justin McCarthy, in which he answers the question supposed to have been put to him, 'Is there no countervailing advantage to the country in the existence of the House of Lords?' by saying, 'No, none whatever.' I might venture, very respect-

fully, to suggest one; it has saved us from Mr. Justin McCarthy, who was found guilty of a 'criminal conspiracy' by the Parnell Commission,[1] and yet, thanks to Mr. Gladstone when prime minister of England, was on the fair way to become prime minister of Ireland.

Ireland under Home Rule would have been 'the vanguard of American civilisation,' her ostensible rulers being mere puppets in the hands of Yankee wire-pullers, who poured a continuous stream of money into the coffers of the various Home Rule organisations in Ireland.

Ireland under Home Rule would have been a thorn in the side of Great Britain, sympathising with, and, as far as practicable, actively co-operating with, her traditional foes.

Ireland's contribution to the Imperial Exchequer would have been less than she contributes now, and yet would have been a constant source of friction and irritation between Ireland and Great Britain.

If the Irish executive were over-ruled by the executive of Great Britain, the latter would have been utterly powerless to enforce its behests, the police being the servants of the Irish executive, and not of the executive of Great Britain.

Being utterly impecunious, except from American subsidies, the Irish cabinet must necessarily have been dependent for supplies on the wealthy north-east Ulstermen, and would have ruined them by excessive taxation.

The success of the Home Rule movement must inevitably mean the oppression of the Irish loyal minority, which includes the Protestant operatives of the North, the professional classes, the capitalists, merchant princes, and prosperous portion of the community, not only in Ulster, but throughout Ireland.

The Loyalists of Ulster have resolved, with clenched hands and resolute brows, that, to use the memorable words of the Duke of Abercorn, they 'will not have Home Rule.'

[1] *Report*, vol. iv. p. 507 (*Times*, reprint).

2. *The Employers' Liability Bill*

Next to the Home Rule Bill comes the Employers' Liability Bill, which the neo-Radicals assert that the House of Lords also 'threw out.'

A more gross misrepresentation of facts there could not possibly be.

Mr. Gladstone, in a fit of temper, moved that the order for considering the Lords'-amendments be discharged, and so put an end to his own offspring.

The House of Lords cordially approved of the principle of the bill, which was read a second time in the House of Lords without a division. Before the bill went up to the House of Lords a Gladstonian member, Mr. Walter McLaren, M.P. for Crewe (which is largely inhabited by workmen in the employment of the London and North-Western Railway Company), very nearly carried an amendment allowing workmen who were members of existing insurance societies, to which the employers largely contributed, and the funds of which were available for accidents of all kinds, to contract themselves out of the new law. The English workman, for the protection of whose insurance funds the amendment was brought forward, were only beaten by a majority of 19, and this through the votes of *the Irish Nationalists*, 57 of whom voted with the government. The House of Lords extended the range of Mr. McLaren's amendment by including within it, on Lord Dudley's proposal, all insurance societies of the working classes, whether then existing or thereafter to be formed, which adopted contracting-out by two-thirds on a ballot. Mr. Asquith gave himself away, when the bill came back to the House of Commons, by offering to accept Mr. Cobb's amendment, which was similar to Mr. McLaren's, except that it cut down the contracting-out period to three years. On a division, however, Mr. Cobb's amendment was only carried by a *majority of two votes*; and the word went round the Radical press—'No more compromises.' Mr. Marjoribanks sent out a whip intimating that Mr. Gladstone would move 'that the Lords' amendments be *laid aside*' on the return of the bill from

the House of Lords with Lord Dudley's proposal reinserted; but the Speaker informed Mr. Gladstone that this motion could only be made when the Lords' amendments involved a breach of the privileges of the House of Commons, which was not the case here. What followed is best described in the language of two leading Radical papers :—

'HOUSE AND LOBBY.
'DAMPED DOWN!
'THE BILL DISCHARGED.
'A LAMENTABLE FIASCO.
'[BY OUR SPECIAL REPRESENTATIVE']

'There is only one thing to say of last night's distressing business. It was a ghastly failure. Everything was prepared; nothing came off—neither a division worth the name, nor a speech worth the hearing, nor a fight worth the attendance of twenty members of the House of Commons. A more ludicrous scene has not, I think, been witnessed since this parliament met. Every Liberal member had received the urgent summons, known as a "red" whip, inviting him to take part in an early division on the motion that the Lords' amendments to the Employers' Liability Bill be 'laid aside.' They crowded to their places, they eagerly awaited Mr. Gladstone, and they received him with the biggest cheer that has been heard in the House since the Home Rule Bill was carried. But, before the Premier had uttered two or three words, it was clear that everything had gone wrong. A more painful performance it would be difficult to imagine. His voice was rough and broken, even the words did not come easily. The arguments were hackneyed, unimpressive, without a touch of fire, and there was not a syllable, not a hint, not a gesture, which suggested that the peers were not a most estimable and serviceable body of public-spirited gentlemen that ever served as the props of a decaying Constitution. Of course, this speech struck the whole Liberal party 'all of a heap.' It did not recover from the shock all through the debate, notwithstanding Mr. Asquith's attempt to reanimate it. Mr.

[1] From the *Daily Chronicle* of Wednesday, February 21, 1894.

Balfour poured shot after shot of light raillery into quarters too dispirited to return the fire; and the rousing cheers of his friends showed how thoroughly the tables had been turned. He let the government have it unmercifully over so weak and undramatic a dropping of a first-class measure. 'We shan't hinder you slaying your bill in the way that best pleases you. Legislative infanticide is the privilege of every government, but I never knew a parent set about the destruction of its own offspring with such evident gusto as you are doing. Only spare us the cant of praising your offspring at the moment when you are cutting its throat. We shall go to the country on this issue with cheerfulness.'

'Mr. Chamberlain poured a steady douche of cold ridicule on the absurd situation: "Let the government slay its child," he repeated, echoing Mr. Balfour. "Why should we, of all people, prevent them?" And the men around and opposite him chafed angrily and helplessly. The division did, as a matter of fact, take place, but it was a mere farce.'

'NICELY "DONE," AND WHO'S TO BLAME?

'When nicely "done" don't lose your temper! That is as good a rule in public as in private life, and we commend it to all Liberals this morning. For the Liberal party was as neatly "done" in the House of Commons last night as we ever remember a political party to have been. They had mustered in full force on the strength of a red-lined whip, intending to obliterate the memory of that unfortunate occasion last week when their majority was reduced to two, by a good thumping division against the Lords' amendments to the Employers' Liability Bill. The happy accident of a clerical error in the House of Lords, whereby the bill was again returned to the Commons, seemed to have been specially permitted by Providence that they might retrieve their position. To this end everything was most carefully planned; Mr. Gladstone was to take a fighting line with the comprehensive resolution 'that the Lords' amendments be laid aside.' The opposition would then, of course, rally to the support of the Lords, and on a crucial division, the Liberal party would

show its real strength in the House of Commons, and get an excellent send-off for a general campaign against the Lords. If the bill had to be buried, the funeral would, at least, be a very imposing demonstration. Unfortunately, however, the Speaker had not been consulted, and, when consulted, he raised insuperable objections to the whole ceremonial. Mr. Gladstone, accordingly, proposed to shift his ground, and moved the more modest resolution, "that the Lords' amendments be disagreed with." But here, again, the Speaker was impracticable. He cruelly alleged that, with the exception of one small amendment, this resolution had already been proposed and carried in the House, and could not therefore be repeated. Under these chilling circumstances nothing remained for Mr. Gladstone to do, except move the humdrum resolution that the bill be dropped, which he did in a manner sufficiently sad and subdued.

'But this was not the end of the disappointment. Mr. Balfour actually declined to divide against this proposition, alleging, in his usual provoking manner, that it was no business of the Opposition to say whether the government should, or should not, abandon one of its measures. So the great division went the way of the great resolution and the great speech, and Liberals were left to go solemnly into the division lobby against six McLarenites!'[1]

'The House of Lords has been accused,' said Mr. Chamberlain, at Leeds,[2] 'of having mutilated the Employers' Liability Bill, and, therefore, of having destroyed it. The statement is absolutely untrue. The House of Lords accepted substantially every provision in the bill. The only thing they did was to add a clause—not to take away, but to add—a new provision which would have protected those working-men who found themselves able to make better arrangements than the bill offered to them. (Cheers.) If the government had accepted the amendment, the bill would have been passed by this time, and every working-man throughout the country would have had every advantage which the government

[1] The *Westminster Gazette*, Wednesday, February 21, 1894.
[2] The *Times*, September 26, 1894.

intended or proposed to give to him. (Hear, hear.) No human being could have deprived him of any one of them, and he could not even have deprived himself, unless he was able to show to an impartial tribunal that he was getting better terms than the bill would have given him.

'I, for one, do not regret the loss of the bill. In my opinion it was a most inadequate measure. If it had passed, all it would have done for you was this: at the present time, under the existing law, if any one of you is injured in the ordinary cause of your employment, an average of two out of ten will get compensation. Under the new law which the government proposed, the average would have been increased, and three out of ten would have got compensation. But the remaining seven—what of them? Are they less worthy of sympathy than the men who had got compensation? If a man loses his leg by an accident which cannot be traced to its source, which may be owing to what is called 'the act of God'—that is to say, for which there is no forthcoming explanation—do you suppose he suffers any less than the man who loses his leg through the negligence of a fellow-workman? ("No, no.") I say that he is just as much entitled to consideration (hear) and to all compensation that pecuniary aid can give him as a man who is injured in any other way. Nothing can be more ridiculous than to accuse the House of Lords in this matter, when they could only give effect to a principle which was defeated in the House of Commons by a majority of just two votes, and which would have been carried by a very large majority if the Irish members, who have no substantial interest in the question, had not been brought up to vote in favour of the government proposals.' (Cheers.)

'The government,' said Lord Salisbury at Edinburgh,[1] 'proposed that the Employers Liability Bill should pass in a form in which the free contract of certain very important industrial communities should be overruled. The votes of Great Britain, by a very substantial majority, determined that it was an unjust demand; but the votes of Great Britain

[1] On October 30, 1894: see the *Times* of October 31, 1894.

were overruled by the votes of the south and west of Ireland.'

Let me conclude this part of my subject with a quotation from a Unionist paper, whose leaderettes are models of terse and vigorous writing:—'The folly of ministers and the servility of their supporters are knitting more closely *the alliance between the Peers and the people* against the intolerable tyranny of the present majority in the House of Commons. Not content with compelling the House of Lords to become the champion of the English majority and the Irish minority against Home Rule, ministers have now forced that assembly to espouse the cause of *freedom of contract* in the interests of thousands of working men.'[1]

8. *The Scottish Fisheries Regulation Bill*

Next to the Employers' Liability Bill came the Bill for the Better Regulation of the Scottish Sea Fisheries.

This bill was *passed through all its stages in the House of Commons at* 1 A.M., a circumstance to which the Duke of Argyll called attention when the bill came before the House of Lords on December 1, 1893. 'Nobody,' said the duke,[2] 'knew anything about it until Mr. Marjoribanks put it in the hands of Mr. Gladstone, who said, in his speech at Edinburgh, "Here's a grand bill which is likely to pass."' The bill set up in each fishery district in what was termed 'the seaboard counties' of Scotland, a fishery district committee, a small local body, half the members of which were to be 'fishery members' representing the fishing interest of their district. There were to be eight of these districts, each of which was to elect one representative to the new Central Fisheries Board. As the bill originally stood, each fishery district committee was to have power to raise and levy a special assessment not exceeding 3*d.* in the pound in any one year. This was subsequently reduced to 1*d.* in the pound

There were two defects in the bill. (1) The method of taxation, (2) the selection of seaboard counties and burghs.

[1] The *Daily Graphic*, December 9, 1893.
[2] *Times, Parl. Debates*, December 1, 1893, p. 468.

'What was the principle of the bill?' said Mr. Balfour, when it came back to the House of Commons with the Lords' amendments; 'it was that one set of people should pay the taxes, and that another should raise the taxes. . Those who paid the taxes did not administer the taxes; those who contributed the rates had no controlling voice in the manner in which they would be expended.'[1]

The Lords struck out the proposal to establish eight districts, the rating clause, and the clause empowering the district committee to borrow, on the security of the rates, for the purchase of bait-beds, and the clause in regard to titles.

But bad as the rating clauses were, they were not so bad as the selection made of seaboard counties and burghs, which were to be taxed. The Marquess of Londonderry, in a speech at Liverpool, put this so neatly, that I cannot refrain from quoting him, merely premising that Lord Playfair, who had charge of the bill in the Lords, defined the term 'seaboard' to mean 'a place washed by the sea':—

'Dumbartonshire was to pay, but Lanarkshire and *Glasgow* were *to get off free.* Why? *Because Sir George Trevelyan was one of the members for Glasgow.* Clackmannan and Stirling were both washed by the Firth of Forth, yet neither had to pay. Mr. J. B. Balfour, the Lord Advocate, was member for Clackmannan, and Mr. Campbell Bannerman sat for the Stirling burghs.'[2]

Needless to say, that the districts selected for taxation, which were not seaboard counties or burghs, protested warmly, both by petition and through their representatives in the House of Commons (many of them Gladstonians), against the exemption of counties and burghs which were 'washed by the sea,' and deeply interested in the fishing industry. Aberdeen, Dundee, Paisley, Greenock, and Edinburgh all petitioned against the bill, and the members for Edinburgh strongly opposed it, on the ground that it 'had no seaboard and no professional fishermen'; while Glasgow, which was exempted, had a 'fish' on its coat of arms (as Mr. Wallace wittily pointed out), was

[1] *Times, Parl. Debates*, pp. 840–841. February 12, 1894.
[2] *Times*, March 1, 1894.

an 'emporium for fish,' and 'had the largest fishing industry in Scotland and the largest but one in the United Kingdom.'[1]

The bill, which Mr. Wallace characterised as a 'Chinese puzzle,' raised such a hornets' nest about the government, that Sir George Trevelyan, on February 19, 1894, announced in the House of Commons that the government had decided to abandon it.

The House of Lords deserves the highest credit for exposing the unfairness and nepotism of this ridiculous bill, but it was the government of Mr. Gladstone which destroyed its own offspring.

'The Fisheries Bill was undoubtedly mismanaged by the government, and the House of Lords had more plausible grounds for mutilating it than any other ministerial measure afforded them.'[2]

This is the emphatic testimony of 'the largest circulation of any [Liberal] paper in the world!'

4. *The Parish Councils Bill*

The 'Local Government (England and Wales) Bill,' better known as 'the Parish Councils Bill,' was, as Mr. Carvell Williams insisted in the debate on the second reading, 'to a certain limited extent, a measure of Disestablishment of the Church.' 'The Church and its officers were to be ousted from the civil administration of the parish.'[3]

The bill was loved by the Neo-Radicals just in proportion as it succeeded in severing the Union of Church and State at the commencing point, at which they were so intimately interwoven. It was because this 'gave pain' to churchmen, that the bill commended itself to men like Mr. Carvell Williams.

This seems to me a far more important matter than the confiscation of church doles and the substitution of elected trustees for those nominated by the donors. The bitter sense of wrong caused by this scheme of disestablishment has, to a certain extent, been enhanced by the fact that it has been

[1] *Times, Parl. Debates*, p. 843. February 12, 1894.
[2] *Daily News*, March 31, 1894.
[3] *Times*, November 3, 1894.

forced upon the Church of England by *the Irish Nationalists*, who are mainly members of a rival church.

'The present government,' said the Earl of Rosebery, very candidly, in his famous speech at Edinburgh,[1] 'has carried the Parish Councils Bill by Irish votes.'

Addressing the Drill Hall Meeting at Portsmouth, Sir William Harcourt said[2]:—

'You may depend upon us that we will deal with the Lords' amendments faithfully. Lord Salisbury has thrown down the gage of battle. It is not we who have challenged the conflict. We take the nation to witness that it has been forced upon us, and depend upon us, we will not shrink.' (Loud and prolonged cheers: the whole audience rising and waving hats and handkerchiefs.)

Monday, February 26, 1894, will ever be memorable in the annals of parliamentary government.

Sir William Harcourt on that night, to use a neo-Radical phrase, 'climbed down,' and himself shrank from dealing with the Lords' amendments in the manner described to his Portsmouth audience.

Eventually the Lords' amendments were reduced to two; one in reference to Mr. Cobb's amendment to the Parish Councils Bill, which required that a majority of the trustees should be elective, instead of one-third, *as Mr. Fowler himself had proposed*; and the other in reference to the limit of population below which parishes should not be compelled to set up parochial councils.

Mr. Gladstone, when the Lords' amendments came down again to the House of Commons, made wry faces over them, but *accepted them nevertheless*, in order to save the bill, recouping himself by a violent tirade against the House of Lords, which might have been in place when they rejected the Home Rule Bill, but was utterly out of place on the Lords' amendments to the Parish Councils Bill!

Mr. Balfour made a spirited reply:

'To abandon the Parish Councils Bill for no other reason

[1] *Times*, March 19, 1894.
[2] *Ibid.* Thursday, February 15, 1894.

than that in one corner of one clause the House of Lords have reintroduced, in a very qualified form, the original clause of the government (loud cheers) would have been a course so grotesquely absurd, that no hope, if hope were entertained, of deriving electoral advantage from it could possibly induce any responsible government to adopt it, or think seriously of doing so. (Cheers.) The right hon. gentleman has told us that, though, under protest, he agrees with the amendments sent down from the House of Lords, he regards the second amendment especially as so essentially a question of principle that he intends to re-open it: Why, sir, it became a principle of the government on November 17 last. (Laughter.) At 6 o'clock on the same day they had quite a different principle (cheers and laughter), which it now appears they have wholly abandoned. (Laughter.) On that day and at that hour the member in charge of the bill came down and told this House that the provision, not the amended, modified, and qualified provision which the Lords have now sent down to us, but the amendment sent down by them two days ago, represented the distinct statement of policy made by the government, and that it was impossible, as a matter of honour and principle, of political wisdom, for the government to recede from it. (Loud cheers.) Well, sir, it has been frankly admitted that to wreck and smash the bill, because we had adhered to their "honour" and their "political wisdom," would have been an absurdity beyond all the legislative absurdities ever attempted or committed in this House.' [1]

'The second part of the right hon. gentleman's speech was nothing else than A DECLARATION OF WAR AGAINST THE ANCIENT CONSTITUTION OF THIS REALM. (Ministerial cheers.) Let me tell him that we, who still believe in the ancient Constitution of these realms, look forward, without dismay, to the fight. (Cheers.)

'An attack on the House of Lords in regard to this'—(the Parochial Councils)—'bill would be exceedingly absurd. I do

[1] *Times*, March 2, 1894. Debate on the Lords' amendments to the Parish Councils Bill.

not know whether it is on the rejection of the Home Rule Bill that the agitation is going to take place. (Ministerial cheers.) That I can understand; and, for my part, I wish for nothing better than to see hon. gentlemen opposite attempting to stir up the country on the issue which will be laid before it, namely, whether the House of Lords was, or was not, rightly guarding the interests of the majority of Englishmen and Scotchmen by exercising its power of veto over the Home Rule proposals of the government.'[1]

A worthy descendant of the great Irish patriot, Lord Plunket, shortly afterwards, said:—'When Mr. Gladstone specified the field on which the battle must be fought—that the battle over the Constitution of this realm must be fought nowhere except at a general election of the realm, and when our leader, Mr. Balfour, in one of the ablest of his many able speeches instantly accepted the challenge, and claimed that it should be decided by a speedy conflict, loud and exultant rose the cheers from one side, but dumbness and dejection speedily fell upon the benches opposite.

'The great agitation for the immediate sweeping away of the House of Lords is to be prosecuted with unrelenting fury. It is my firm belief that nothing better could happen to us from a party point of view. Even if they had had Mr. Gladstone to conduct the agitation in person, it was foredoomed to certain failure; but without the prestige of his name and experienced generalship it will be simply ridiculous.'[2]

'It appears to me,' said Lord Tweedmouth,[3] at the dinner given to him by the Eighty Club, 'that this question of the House of Lords is one which must soon be decided upon by the people. We cannot hide from ourselves that the campaign upon which we are entering is one full of difficulty, and perhaps full of *danger* to our party' (loud cries of 'No, no'), not permanently, but for a time; *because no amount of*

[1] *Times*, March 2, 1894. Debate on the Lords' amendments to the Parochial Councils Bill.

[2] The Right Hon. David Plunket, Q.C., M.P., at Wimbledon, March 2 1894.

[3] *Daily News*, July 11, 1894.

mere shouting will enable you to bring down the House of Lords. Let us not think that a House of Commons, with a Liberal majority of 30 or 40, can efficiently deal with this question.'

5. *Sir William Harcourt's Budget*, 1894

The *Speaker*[1] twits the House of Lords with 'running away,' instead of rejecting Sir William Harcourt's Budget Bill, of which they disapproved. The conduct of the Peers on the second reading of this bill and in committee seems to me an admirable object-lesson. They adhered to constitutional practice, instead of protecting, as they could easily have done, their successors from plunder.

At the same time, it is impossible to conceal from oneself that Sir William Harcourt's Budget is founded upon the principle of deterring poor men from becoming rich by telling them that, in case they succeed in becoming rich, you will harass their posterity with excessive taxation; it thus lessens the incentive to poor men to become rich, and, to that extent, is calculated to retard the prosperity of the country.

The student of May's 'Parliamentary Practice'[2] will find (perhaps to his surprise) that, so far from the Commons being disposed to insist upon the rigid enforcement of their right to originate legislation imposing charges upon the people, the tendency has been, for the sake of convenience, to modify, or waive it in many cases.

Even when the Lords' amendments are *distinct infringements of the privileges asserted by the Commons*, such amendments *have been accepted;* amendments, for example, dealing with the relief of the poor, or with municipal, county, and local rates and assessments.[3]

For upwards of a century it has been the custom to present to *both* Houses messages from the Crown for pecuniary aid;

[1] July 28, 1894 (vol. x., No. 239, p. 88).

[2] 10th edition (1893). See e.g. chap. xxii. pp. 547 *et seq.* ('Relaxation of Commons' Privileges'), chap. xxv. pp. 647 *et seq.* (Private Bills); appendix, pp. 830, 831 ('Pecuniary Penalties').

[3] *Ibid.* chap. xxii. pp. 544 *et seq.* ('Acceptance by the Commons of privileged amendments.')

and the Lords have taken exception, if such a message is sent exclusively to the Commons.[1]

The Lords express their opinion upon the public expenditure, the method of taxation, and of financial administration, both in debate and by resolution; and they investigate these matters by their select committees.[2]

6. *The Evicted Tenants Bill*

The Duke of Argyll defined the bill to be 'a bill to empower certain persons to deal with agricultural tenancies in Ireland, so that the law may be a praise to those that do evil, and a terror to those that do well.'[3]

The 'planters,' as they were called—the men who, in implicit reliance on the strong arm of the law to protect them in the enjoyment of their rightful occupation, have taken 'evicted farms,' were to be forcibly ousted; and the dishonest men who, adopting the revolutionary principles of the 'Plan of Campaign' (denounced by no less an authority than the head of their Church), had 'held the rents,' though well able to pay them, and so got 'evicted' (being the 'authors of their own wrong'), were to be compulsorily 'reinstated!'

Mr. Chamberlain, in defending at Leeds the action of the Lords, said:—

'Is it, then, that they have rejected the Evicted Tenants Bill? I do not believe it. I do not believe there is one man in England who agrees with that bill, or if he agrees about it at all, it is to agree that a more monstrous, more iniquitous, more absurd measure was never put upon the table of the House of Commons. (Cheers.) Why, gentlemen, the government themselves do not believe in the bill. It was forced upon them, clearly against their will, by their Irish allies. It was only intended to whitewash Messrs. Dillon and O'Brien, to relieve them fr m the responsibilities of the dishonest advice they had given to the tenants in Ireland; and if it had passed, it would have had the effect of evicting—it was called

[1] May's *Parliamentary Practice*, 10th edition, chap. xxii. p. 541.
[2] *Ibid.* and 1 Todd's *Parl. Government*, ed. 2, 696.
[3] Cited by the *Spectator* of August 18, 1894.

a bill for the relief of the evicted tenants—would have had the effect of evicting hundreds of honest, industrious, and worthy men from the holdings in which they had been employed, in which they had put their capital during the last few years, in order to make room for the rogues or the dupes of the Plan of Campaign.'[1] (Cheers.)

'Great Britain,' said Lord Salisbury at Edinburgh,[2] 'rejected this bill, and rejected it with a very substantial majority, but they were overruled by the disciplined battalions of the south and west of Ireland.'

CHAPTER XXI

THE HIGH COURT OF PARLIAMENT

(1) *The Appellate Jurisdiction of the House of Lords*

In its judicial character the House of Lords must be regarded as constituting, exclusively, that supereminent tribunal which we distinguish by the title 'The High Court of Parliament,'[3] a court identified, by representative succession, with the great councils of the realm, assembled in distant ages to advise the sovereign to enact laws and dispense justice. Viewed in this light the jurisdiction of the House of Lords may be referred to a remote antiquity, and is, in truth, coeval with the rudiments of the English Constitution. For a thousand years its power has been acknowledged as the last resort of litigants, and the highest court of justice in the kingdom.[4]

It existed under the Anglo-Saxon polity. The supreme legal tribunal of the Anglo-Saxons was the Witenagemot, which, like our present House of Lords, was paramount to every other.[5] One of the constitutions of King Alfred

[1] The *Times*, September 26, 1894.
[2] On October 30, 1894. See the *Times* of October 31, 1894.
[3] See e.g. the statute 27 Eliz. cap. 8 (1585).
[4] Macqueen's *Appellate Jurisdiction of the House of Lords*, chap. pp. 1, 2.
[5] Sharon Turner's *Anglo-Saxons*, vol. iv. book iv. chap. iv. pp. 273–285.

expressly required that his nobility should be instructed in the laws.[1]

The House of Lords was confirmed and fortified as the supreme appellate tribunal by the Norman polity.[2]

The principle will be frequently found assented to by the House of Commons in the rolls of parliament, that the Lords were the judges, the Commons merely petitioners to them.[3]

On the deposition of Richard II. the House of Commons absolved themselves from all responsibility in respect of that proceeding by recording their solemn protestation, 'That the judgments of parliament appertain exclusively to the King and the Lords, and not to the Commons.' To which the Archbishop of Canterbury, for the Crown, made reply: 'That the King and the Lords have ever had, and of right shall enjoy, the privilege of judgment in parliament, as the Commons have confessed.'[4] This principle will also be found embedded in the Year Books. Thus, in the Year Book,[5] 1 Hen. VII., the twelve judges assembled in the Exchequer Chamber unanimously declared (almost in the words of the rolls of parliament) that '*the right of adjudication upon error in parliament belongs solely to the Lords and not to the Commons.*'

The judicial powers now exercised by parliament, though of the highest order, can give no adequate idea of the supremacy in the administration of justice attributed to that assembly in the olden times, when 'petitions poured in from all quarters, at every meeting of parliament, not only upon subjects of public and national concern, but for relief in private affairs.' The parliament was then regarded as the supreme national tribunal, whose function it was 'to redress all wrongs, to remedy all abuses, and to remove all difficulties with which a man was pressed, either in his person or property.'[6]

The parliamentary 'receivers and tryers,'[7] who were

[1] Macqueen's *Appellate Jurisdiction of the House of Lords*, chap. i. p. 2, note (*b*); and see *Asser*, 43, 67.

[2] *Ibid.* pp. 1, 2. [3] Prynne, p. 848.

[4] Rot. Parl. vol. iii. p. 427, 1 Hen. IV. 79.

[5] *Year Books*, vol. ix. fols. 19, 20, § 5 (1 Hen. VII.)

[6] Reeves' *History of the English Law*, vol. ii. chap. xiv. p. 407.

[7] The form of appointing receivers and tryers of petitions was finally discontinued in 1741. *Parl. Hist.* vol. xi. 1013.

appointed in each parliament to examine the multifarious petitions that flowed in at the opening of a session, were almost always Spiritual and Temporal Peers.[1]

In the rolls of parliament, 33 Edward I., we find the earliest appointment of 'receivers and tryers' of petitions.

The ultimate jurisdiction of the House of Lords, either by removing into it causes commenced in the *common law courts*, or by *writ of error*, complaining of a judgment given therein, seems to have been as ancient, and founded on the same principle of a paramount judicial authority delegated by the Crown, as that which they exercised upon original petitions.[2]

With regard to *appeals from courts of equity*, it was reasonable that the vast power of the Court of Chancery should be subject to some control, and if the ultimate jurisdiction of the peerage was convenient and salutary in cases of common law, it was difficult to assign any satisfactory reason why it should be less so in those which are technically denominated equitable.[3]

The House of Commons made itself rather foolish in the controversy regarding appeals from the courts of equity in England to the House of Lords.

In 1675 the appeal of *Shirley v. Fagg* was heard by the House of Lords. The House of Commons was very indignant, and came ultimately, as their wrath increased, to the following resolution :—

'Whereas this House has been informed of several appeals depending in the House of Lords from courts of equity, to the great violation of the rights and liberties of the Commons of England, it is this day resolved and declared that whosoever shall prosecute any appeal against any commoner of England, from any court of equity, before the House of Lords, shall be deemed and taken a betrayer of the rights and liberties of the Commons of England, and shall be proceeded against accordingly.'[4]

[1] Creasy's *History of England*, vol. ii. chap. iii. pp. 222, 223, 238 Reeves' *History of the English Law*, vol. ii. chap. xiv. pp. 407, 408.

[2] Hallam's *Constitutional History of England*, vol. iii. chap. xiii. p. 19.

[3] *Ibid.* pp. 24, 25.

[4] *Commons' Journals*, November 19, 1675.

The House of Lords next day resolved, that this vote of the House of Commons was 'illegal, unparliamentary, and tending to a dissolution of the government.'[1]

Notwithstanding the resolution of the House of Commons the Lords continued to exercise their general jurisdiction over appeals from courts of equity.[2]

'The result of this contest,' says Mr. Macqueen, in his learned work on 'the Appellate Jurisdiction,'[3] 'has always been regarded as a triumph of the Peers, and the achievement is ascribed to the famous Earl of Shaftesbury,' whose eloquent speech in 1675 has been handed down to us. In the course of it he said:—

'My Lords, this matter is no less than your whole judicature, and *your judicature is the life and soul of the dignity of the peerage in England.* You will quickly grow burdensome if you grow useless; you have the greatest and most useful end of parliaments principally in you, which is, not to make new laws, but to redress grievances and to maintain the old landmarks.'[4]

With regard to *Scottish appeals*, the people of Scotland had, before the Union, a right of appeal to the Scottish parliament. The Act of Union was not intended to deprive the Queen's subjects of any privilege formerly enjoyed by them. The British parliament came in the place of the Scottish parliament. Consequently, without any special enactment, the appellate jurisdiction was quietly treated as transferred from the Scottish parliament to the British parliament by necessary implication.[5]

The first appeal presented to the House of Lords from Scotland was that of *the Earl of Roseberie v. Sir John Inglis* in the year 1707.[6]

[1] *Lords' Journals*, November 20, 1675.

[2] Hallam's *Constitutional History of England*, vol. iii. chap. xiii. p. 26.

[3] P. 89.

[4] *Parliamentary History*, vol. iv. 793-4. I had occasion to cite this passage when opposing the abolition of the appellate jurisdiction in 1873: see Hansard's *Parl. Debates*, third series, vol. ccxvi. 656.

[5] See Macqueen's *Appellate Jurisdiction of the House of Lords*, p. 288.

[6] *Ibid.* p. 286.

With regard to *Irish appeals* the earliest appeal from an Irish court of equity would appear to be the case of *Nugent v. Talbot*, on November 11, 1670.

In 1698 the Society of the Governor and Assistants of the new Plantation in Ulster presented a petition to the House of Lords in England, complaining that the House of Lords in Ireland had asserted a right to review a decree made in their favour, and against the Bishop of Derry, by the Irish Court of Chancery.

The House of Lords in England, after hearing counsel for the bishop, came to a resolution, that 'the appeal to the House of Lords in Ireland was *coram non judice;* and that all the proceedings thereon were null and void; and that the Court of Chancery in Ireland ought to proceed in the cause, as if no such appeal had been made to the House of Lords there; and if either of the parties find themselves aggrieved by the decree of the Court of Chancery in Ireland, they are at liberty to pursue their proper remedy by way of appeal to this House.'

'The right of the English House of Lords,' says Mr. Macqueen,[1] 'to review the proceedings of the Irish courts of justice was established by many precedents; and was ultimately conceded and confirmed by the reluctant acquiescence of the Irish parliament.'

In 1783, an appellate jurisdiction was granted (or, perhaps, restored) to the Irish House of Lords from the Irish courts of justice.

This jurisdiction the Irish House of Lords retained until 1800, when, by the Act of Union, Article 8, the jurisdiction became finally vested in the House of Lords of the United Kingdom of Great Britain and Ireland.[2]

The Home Rule Bill proposed to transfer the jurisdiction from the House of Lords to the Privy Council, the supreme court of appeal from the British colonies!

Mr. Justin McCarthy, M.P., in his able work 'The History

[1] *Appellate Jurisdiction of the House of Lords*, p. 92.
[2] *Ibid.*

of Our Own Times,'[1] writing about the scheme of Mr. Gladstone's first administration in 1873 for the abolition of the House of Lords, as the final court of appeal for the United Kingdom, observes:—

'Great as the change was which Lord Selborne[2] proposed to introduce, public attention paid comparatively little heed to it at the moment.'

In the House of Lords any attempt to save the jurisdiction of that House was hopeless. Only once was a division taken, and then the smallness of the numbers showed the lack of interest in the question.[3] Two amendments to the third reading were snuffed out peremptorily.[4]

I was determined that the House of Commons should have an ample opportunity of discussing the question, and so gave notice that I would move, on the motion for the second reading of the Supreme Court of Judicature Bill 1873, the following amendment:—

'That it is inexpedient to abolish the jurisdiction of the House of Lords, as an English court of final appeal.'[5]

In moving the second reading of the Supreme Court of Judicature Bill, 1873, the Attorney-General, Sir John Coleridge (afterwards Lord Coleridge and Lord Chief Justice of England), condemned the appellate jurisdiction of the House of Lords as strongly as Mr. Labouchere condemns its exercise of legislative functions[6]:—

'No man, whatever might be his view of the constitutional position of the House of Lords, who had any knowledge of its practical working, could deny that a more indefensible institution it was hardly possible to conceive. It was his duty, whatever hon. gentlemen opposite might think, to say what he thought of it, as a judicial institution. For his part, he would say, if this bill did nothing else but *get rid of the House of Lords, as a judicial tribunal*, it would be worth while to pass it.'

[1] Vol. iv. p. 386. Mr. Justin McCarthy is a member of the new 'National League for the Abolition of the House of Lords.'

[2] The Lord Chancellor.

[3] 38 to 13. Hansard's *Parl. Debates*, third series, vol. ccxv. 1402.

[4] *Ibid.* 1463, 1464 [5] *Ibid.* ccxvi. 654. [6] *Ibid.* 642, 649.

In moving my amendment[1] I alluded to the 'sweeping condemnation' which the Attorney-General had pronounced on the appellate jurisdiction, and then observed:—'The Attorney-General said that the present bill was founded on the Report of the Judicature Commission. That Commission had recommended that there should be a new court of appeal created, in substitution for the Court of Exchequer Chamber and the Court of Appeal in Chancery, and that there should be an appeal to the House of Lords both from the new court of appeal and also, directly, subject to the consent of the respondent, from the High Court of Justice. The Commissioners were anxious that an opportunity should be afforded of testing the efficiency of the new court of appeal before touching the appellate jurisdiction of the House of Lords, and that, in any case, a *second* appeal should be retained. This bill, therefore, ignored the recommendations of the Judicature Commission. To the first report were attached the names of the present Lord Chancellor (Lord Selborne) and the Attorney-General.

'A decision of the House of Lords had an air of authority about it which the decision of an ordinary judge did not possess; it was severed off sharply from the decisions of the courts below by a barrier of prestige and traditional respect, and, therefore, the existence of the appellate jurisdiction of that House tended to give fixity to our law. The ordinary judges cited it with a respect which they did not show to the decisions of one another.

'To begin the work of law reform with the appellate jurisdiction of the House of Lords seemed to him like commencing to build a house at the roof.

'Again: the bill did not touch Scotch or Irish appeals. A peer of the realm only would do for Scotland and Ireland, a commoner was quite good enough for England. The Scotch were proverbially a shrewd people, and not overgiven to sentimentality, and yet they were susceptible to the traditional influence and authority of the House of Lords. Sir James

[1] Hansard's *Parl. Debates*, third series, vol. ccxvi. 654-659.

Moncrieff had said that "the dignity of the final court of appeal was the reason why the people of Scotland were reluctant to part with it." Mr. Hope, Lord Justice Clerk, had said that "if a single person, other than a peer of the realm, were placed upon the final court of appeal, it would lose all authority in Scotland." The Scotch law differed from the English; the English and Irish laws were very similar. Under this bill the similarity between English and Irish law would exist no longer; it would, in consequence, introduce confusion where union now existed.

'Lord Westbury, when giving his evidence before the select committee in 1856, said he "wished the House of Lords to be the great appellate tribunal for the whole Empire —the one final court of appeal"—absorbing the jurisdiction of the Judicial Committee of the Privy Council.'

I suggested that the House should sit during the recess for the hearing of appeals, and that permanent Lords of Appeal should be created to assist the Lord Chancellor and the Law Lords in the exercise of the appellate jurisdiction; such lords to be selected from ex-judges, and invested with life-peerages, and to receive an adequate salary, so as to induce men of eminence to serve in that capacity.[1] I concluded as follows:—

'The bill would cause a great change in the position of the House of Lords, as an integral part of the Constitution. The House of Lords would cease to exercise the judicial powers of the High Court of Parliament; no doubt it would continue to be, as hitherto, a deliberative and legislative assembly, but it would cease to be what our ancestors intended it to be—the last resort of the suitor, who complained that the law had been misinterpreted by the judges who wield the equitable jurisdiction, or by the judges of the land.'

Owing to my amendment, the debate which followed, and lasted two nights,[2] turned much more on the abolition of the appellate jurisdiction of the House of Lords than on the

[1] These suggestions were subsequently carried out.
[2] June 9 and June 12, 1873.

constitution of the newly-created Supreme Court of Judicature.

By sec. 20 of the Supreme Court of Judicature Act, 1873 (36 & 37 Vict. cap. 66), '*No error or appeal shall be brought* from any judgment or order of the High Court of Justice or of the Court of Appeal, nor from any judgment or order, subsequent to the commencement of this act, of the Court of Chancery of the County Palatine of Lancaster, *to the House of Lords*, or to the Judicial Committee of Her Majesty's Privy Council; but nothing in this act shall prejudice any right existing at the commencement of this act to prosecute any pending writ of error or appeal, or to bring error or appeal, to the House of Lords, or to Her Majesty in Council, or to the Judicial Committee of the Privy Council, from any prior judgment or order of any court, whose jurisdiction is hereby transferred to the High Court of Justice or to the Court of Appeal.'

It has been so frequently stated that this section passed unchallenged in the House of Commons in 1873, that it may not be out of place here to state that a division, in which I acted as 'teller,' took place upon the clause in the committee on the bill in the House of Commons on July 8, 1873. The numbers were, for the clause 154, against it 93.[1] In the minority the names appear of fourteen members of the Conservative Government installed in office next year, and also the name of the late Mr. Raikes, afterwards chairman of committees.

The effect of this section would have been so pernicious that it was impossible that it could be allowed to remain unaltered. In the first place, it gave *only one court of appeal* instead of two – (an intermediate and a final court of appeal) —so that the decision of one set of judges might have been upset by the decision of another set of judges, without any final court to decide between them; in the second place, the House of Lords was preserved as a final court of appeal from the courts of *Scotland and Ireland*, while abolished as a final court of appeal from the courts of *England*! What was to be done to remedy these defects?

[1] Hansard's *Parl. Debates*, third series, vol. ccxvi. 1756.

Earl Cairns, as Lord Chancellor, introduced in May 1874 two bills, the effect of which, if carried, would have been to reintroduce the system of *two appeals*, one an intermediate and the other a final appeal; and secondly, to substitute for the House of Lords a *new* final court of appeal for Scotland and Ireland, to be termed 'the Imperial Court of Appeal.'[1]

Lord Redesdale in the Upper House, and Sir George Bowyer in the Lower, fought strenuously against the new proposals for abolishing the appellate jurisdiction of the House of Lords; but Lord Redesdale was beaten by 52 to 29.[2] Sir George Bowyer had to withdraw his amendment.[3]

In the course of the debates, Lord Selborne stated that it was Lord Coleridge who first suggested that the second appeal should be abolished. Lord Penzance said that no committee or commission had recommended it.[4]

The committee 'reported progress' on July 16, 1874, to sit again to-morrow; but it never sat again. On July 27 the bill was withdrawn. A 'Supreme Court of Judicature (1873) Suspension Bill' was substituted for it.[5]

Sir George Bowyer said he trusted that in the interval, before the Act of 1873 came into operation, the Government would consider the question of the ultimate court of appeal. He was of opinion that the House of Lords was the greatest court of appeal in the world, was unequalled in dignity and learning, and that no other court of appeal would so fully secure the confidence of the bench, the bar, and the public.[6]

'Meanwhile, a change took place in public opinion on this matter.'[7]

In a speech delivered in the House of Commons, three years later, Mr. Disraeli said[8]:—

[1] See the debates in Hansard, third series, vol. ccxviii. 1803–1834.
[2] *Ibid.* vol. ccxix. 1359–1398.
[3] *Ibid.* vol. ccxxi. 133–154.
[4] *Ibid.* vol. ccxix. 1038.
[5] *Ibid.* vol. ccxxi. 173, 757, 788–792, 1039.
[6] *Ibid.* 1222–32 (Aug. 3, 1874).
[7] Stephens's *Commentaries on the Laws of England*, 11th edition (1890), vol. iii. book v. chap. vi. p. 384.
[8] When, as prime minister, he moved the second reading of the Appellate Jurisdiction Bill, 1876, in the House of Commons.

'At the time I am speaking of (1878) the most complete apathy prevailed *in the House of Lords* on a question which was intimately connected with its privileges; nor was there, *out of doors*, any particular feeling on the subject. But it so happened that in the interval (1874–5) a considerable revolution had occurred in the opinion of *the House of Lords* itself, and of powerful parties *outside* that House. The subject had been deeply considered and acutely felt; and instead of that state of perfect apathy which was originally found to prevail by the present Lord Chancellor,[1] when he had to deal with the question, he found the utmost excitement. He found there was great opposition proceeding, not merely from his own friends, and not confined to his own side of the House, but also including many of his habitual opponents.

'A feeling was expressed on the part of *the House of Lords* which made it impossible to doubt that the fate of the bill' (modelled on that of the Earl of Selborne) 'would be different from what it was in 1874.

'*Outside* the House that sentiment was, I may say, even stronger. Influential classes, supposed to be particularly capable of offering an opinion upon this question, had made themselves heard. Ireland and Scotland had expressed their sentiments in a manner which could not be misunderstood; and, in every way in which a government can learn what opinion is, we found that we were on very dangerous ground, if we contemplated settling the question of judicature reform, and of carrying this considerable change in a manner which would recommend itself to the unanimous feelings of the country.'

Mr. Disraeli then proceeded to explain the provisions of the Appellate Jurisdiction Bill:—'What we propose in this bill is, that *the court of ultimate appeal shall remain in the House of Lords.*'[2]

It will always be a source of pride to me that it was on my initiative that the movement was started, which ultimately

[1] Earl Cairns.
[2] Hansard's *Parl. Debates*, third series, vol. ccxxix. 1680–1693.

proved successful, for preserving the appellate jurisdiction of the House of Lords.

The first step that I took was to obtain signatures from the members of my circuit, in favour of preserving it, to a memorial addressed to the Lord Chancellor (Earl Cairns).

Almost every member of the northern circuit signed the memorial, *irrespective of political party*. The memorial was, in due course, forwarded by me to the Lord Chancellor, and the receipt of it courteously acknowledged.

This was in November 1874.

In the next month I formed the committee for preserving the House of Lords, as a court of final appeal for the United Kingdom.

The committee (the minutes of which lie before me) met for the first time at the chambers of the late Sir George Bowyer, 13, King's Bench Walk, Temple. Only three members were present, the Right Hon. James Stuart Wortley, Q.C., in the chair, Sir George Bowyer, Bart., M.P., and myself. From this small beginning the committee became one of the most powerful organisations this country has ever seen.

It was confined to peers, members of parliament, and Queen's counsel. It was formed on entirely non-party lines, and herein consisted its great strength, as no government, Liberal or Conservative, could afford to disregard it. It was called by its opponents 'The St. James's Place Caucus,' because its subsequent meetings were held, at the invitation of the chairman, at his residence, 16, St. James's Place, a most central and accessible rendezvous. But in its constituent elements the committee was *international* in its character. The leading advocates, the solicitors and the judges of Scotland and Ireland viewed with repugnance the idea of the final court of appeal for the United Kingdom being composed of a scratch team from Westminster Hall, and, still more, the proposal to have only one court of appeal.

In the House of Lords both Scotland and Ireland were represented, and there could be no feeling of humiliation in recognising the time-honoured authority of 'the High Court of Parliament.'

Among the petitions presented in favour of preserving the appellate jurisdiction of the House of Lords was one from the Scottish advocates, and one from the Writers to the Signet. The Irish bar also passed resolutions in favour of retaining the jurisdiction.

On February 5, 1875, Earl Cairns, as Lord Chancellor, introduced the Supreme Court of Judicature Act (1873) Amendment Bill in the House of Lords, and mentioned, casually, that it was 'so completely identical' with the first bill of 1874, that he did not think it necessary to explain it. Lord Redesdale (chairman of committees) immediately rose and called attention to the formation of the committee for preserving the House of Lords as the court of final appeal for the United Kingdom, and urged the House to stay its hand, and not part with its appellate jurisdiction.[1] When the bill came before the House of Lords on the second reading,[2] Lord Redesdale was powerfully supported in his views by two such eminent men as the late Earl of Harrowby and Lord Penzance, and the committee stage was postponed for ten days.

Meanwhile, some members of the committee for preserving the House of Lords as the court of final appeal for the United Kingdom had been in communication with Mr. Disraeli, who was then Prime Minister, and who, we knew, had, all along, been in sympathy with our movement; and the result was, first, that on March 1, 1875, the bill having been postponed till March 4, the late Duke of Buccleuch placed the following notice of motion on the notice paper of the House of Lords:—

'On going into committee on the Supreme Court of Judicature Act (1873) Amendment Bill, to move the following clause:—

'That so much of *section* 20 of the Supreme Court of Judicature Act, 1873, as provides that "no error or appeal shall be brought from any judgment or order of the High Court of Justice or the Court of Appeal to the House of Lords" *is hereby repealed*, and there shall be such appeal to the House of Lords as is hereinafter provided.'[3]

[1] Hansard's *Parl. Debates*, third series, vol. ccxxii. 35, 147–154.
[2] *Ibid.* 737–744.
[3] *Ibid.* 985.

On March 4, the Duke of Buccleuch intimated that he did not intend to move his new clause in committee, but would reserve it for the report, which could not come on till after Easter; so the bill passed through committee, unamended.[1]

A further result was that on March 5, 1875, the Right Hon. Spencer Horatio Walpole gave notice in the House of Commons that on an early day he would call the attention of the House of Commons to the defective state of the Supreme Court of Judicature Act, 1873, with reference to the constitution of Her Majesty's Court of Appeal, and move the following resolutions:—

'(1). That it is desirable, in any arrangement of the judicature of the United Kingdom, to make provision that the ultimate appeal in all cases shall be made to *the same* tribunal.'

'(2). That for that purpose it is expedient that such *appeals* from the courts of Great Britain and Ireland *should be carried, as heretofore, to the House of Lords.*'[2]

This notice of motion came like a bomb-shell into the camp of those Liberals who were clamouring for the abolition of the House of Lords as the court of final appeal. I well remember being surrounded by members in the division lobby who wanted to know how matters stood, and what would be the outcome of the movement of which this notice of motion was the latest phase.

The answer came three days later from the Lord Chancellor in the House of Lords itself.

He moved that the order for receiving the report, after the Easter recess, be discharged, and that the bill be withdrawn.[3]

The House of Lords thought, in 1873, that, in agreeing to the abolition of their House as the final court of appeal, they were only bowing gracefully to the will of the people; but the moment they became convinced that public opinion was strongly favourable to the retention of their jurisdiction, they insisted on its retention themselves. And yet it is said that

[1] Hansard's *Parl. Debates*, third series, vol. ccxxii. 1174–5.
[2] *Ibid.* 1284. [3] *Ibid.* 1371–1379.

the House of Lords is indifferent to public opinion! Earl Cairns, in 1873, said:—

'My noble and learned friend (Lord Selborne), when dealing with the appellate jurisdiction of this House, did nothing more than justice when he said, "Your only desire was to seek the public good." The great danger, in my opinion, has always been that some of your lordships would be tempted to part with your appellate jurisdiction too easily.'[1]

So far from being autocratic, the House of Lords is *intensely sensitive to public opinion.*[2]

'The Government,' the Lord Chancellor said, in 1875,[2] 'have found that from among those who ordinarily are the supporters of the Government they must prepare, not only not to receive support for this bill, but to encounter a very general opposition. Even on the other side of the House Her Majesty's Government find opinion divided.'

Section 20 of the Supreme Court of Judicature Act, 1873, was suspended for a year.

By section 2 of the Supreme Court of Judicature Act, 1875,[3] the suspension was to last till November 1, 1876.

During the interval which elapsed between November 1, 1875, and November 1, 1876, the House of Lords dealt with great freedom with the decisions of the courts below.[4]

The Appellate Jurisdiction Act, 1876,[5] which received the royal assent on August 11, 1876, being placed on the statute-book by the government of Mr. Disraeli, is a lasting monument to the constructive genius of that great statesman.

This admirable measure strengthened the House of Lords by a permanent addition of *ex-officio* 'Lords of Parliament' to its judicial element. The most eminent lawyers of the day, who might hesitate to take upon themselves the burthen of an hereditary peerage, willingly accept the position of a 'Lord

[1] Hansard's *Parl. Debates*, third series, vol. ccxiv. 362, 363.
[2] *Ibid.* vol. ccxxii. 1372.
[3] 38 & 39 Vict. cap. 77.
[4] A *résumé* of the cases will be found in my *Supreme Court of Judicature Acts* (Waterlows), pp. 249–251 (third edition).
[5] 39 & 40 Vict. cap. 59. The statute is set out in the appendix.

of Appeal in Ordinary.' Never has a tentative measure been a more brilliant success. Lord Salisbury is strongly in favour of the principle of *ex-officio* Lords of Parliament,[1] and there seems no reason why the principle should not be extended. This was Lord Rosebery's opinion in 1884.[2]

Lord Moncrieff, speaking on the second reading of the Appellate Jurisdiction Bill, observed :—

'I cannot, my Lords, refrain from saying that the profession in Scotland have been very well satisfied with the administration of appeals in your Lordships' House.'[3]

Lord O'Hagan, ex-Lord Chancellor of Ireland, said,[4] on the second reading :—

'The measure is a graceful concession to the general opinions and desires of the three kingdoms whose highest interests it will so materially affect. It is right in principle, and sustains the time-honoured jurisdiction which your Lordships, somewhat rashly, consented to part with, and the changes proposed will give to this House, sitting judicially, a permanence, efficiency, and continuity of action such as it never before possessed.'

Lord Redesdale, on the motion for going into committee on the bill, said,[5] in reference to the constitutional aspect of the new creation :—

'The bill gives to *the Law* an analogous representation in this House to that which *the Church* has so long enjoyed.'

Lord Napier and Ettrick, in the course of an eloquent speech in committee on the bill, observed[6] :—

'The provisions of this bill will be very acceptable to Scotland. The term of "the House of Lords" commands a degree of respect which would not be accorded to any other designation. The House, indeed, stands in the place of the ancient parliament of Scotland, and in your Lordships' House, by usage, if not by actual judicial functions, the whole of the ancient laws of Scotland are perpetuated and reproduced.'

[1] See his speech on the 'Supreme Court of Judicature Bill, 1873,' Hansard's *Parl. Debates*, third series, vol. ccxv. 1284, 1289.
[2] *Ibid.* vol. cclxxxix. 949. [3] *Ibid.* vol. ccxxvii. 922, 923.
[4] *Ibid.* 924. [5] *Ibid*, 1286. [6] *Ibid*, 1288.

The Appellate Jurisdiction Act has been remarkably successful in attracting to the House of Lords men of the highest eminence in the law.

Of the late Lord Hannen, one of the Lords of Appeal in Ordinary, the *Times*[1] says, 'He leaves behind him no superior in many of the attributes which best become a judge.'

The *Speaker* pays a deserved tribute to the late Lord Bowen[2]:—

'A House of Lords composed of Lord Bowens would, in its way, be the most brilliant and irreproachable assembly in Europe.'

By the Appellate Jurisdiction Act, 1887,[3] a very vital change was made in the status of a Lord of Appeal in Ordinary.

From being an official Lord of Parliament, he became a life peer, being entitled to 'sit and vote' in the House of Lords *after* he has resigned his official position. I shall treat of this subject fully hereafter.[4]

'The peers have a right to be attended by the judges, for the greater dignity of their proceedings, and, in the exercise of the appellate jurisdiction, it has often been their practice to request the opinion of the judges, in point of law, upon the question which is before them for their determination.'[5] The judges sit upon the woolsack, beside the Lord Chancellor.

Dr. Lushington, in the debate on Mr. Hume's motion to exclude the judge of the Admiralty Court from a seat in the House of Commons in future parliaments, gave the following explanation of the exclusion of the Common law judges from seats in the House of Commons[6]:—

'On what did that ancient disqualification rest? On this, that they were liable to be summoned to attend the House of Lords. They could not serve two masters. They could not be in the House of Commons when their duty to their con-

[1] Of March 30, 1894. [2] April 14, 1894 (vol. ix. No. 224).
[3] 50 & 51 Vict. cap. 70. The statute is set out in the Appendix.
[4] See Chap. XXIX. *infra*.
[5] Stephens's *Commentaries on the Laws of England*, vol. ii. book iv. part i. chap. i. p. 356.
[6] Hansard's *Parl. Debates*, third series, vol. xlix. 1120.

stituents required their presence there, and, at the same time, in the House of Lords, when their presence was wanted to enlighten their lordships. That, and that alone, was the ground of their disqualification.'

The attendance of the judges in the House of Lords would have ceased, no doubt, with the abandonment of the appellate jurisdiction.

If the Neo-Radicals put an 'end' to the House of Lords as a deliberative and legislative assembly, I fail to see how it could be retained solely as a court of final appeal for the United Kingdom. It would be no longer a parliamentary institution, and it is as 'the High Court of Parliament' that it exercises judicial functions. The Neo-Radicals would, consequently, be responsible for dislocating our whole system of the graduation of courts, which has been settled, with such infinite pains, on an international basis, with the consent of the legal profession and the suitors in England, Ireland, and Scotland.

(2) *Impeachment by the Commons at the Bar of the Lords*

It is a fundamental principle of the British constitution that 'the King can do no wrong.' He acts upon the advice of his ministers, and upon them rests the responsibility of any maladministration.[1]

It is at the bar of the House of Lords that the House of Commons calls the maladministrators to account.

The men who, in the House of Commons, during the fourteenth century, initiated and maintained the struggle against the criminal jurisdiction of the King's ordinary council (*consilium ordinarium*), which their successors in Charles I.'s Long Parliament were destined to complete, seem clearly to have understood the need of there being a tribunal higher than the ordinary courts of law, before which great offenders in the maladministration of the state might be solemnly tried and adequately punished. The

[1] See Chap. XXIII. *infra*.

'High Court of Parliament' itself was treated as the fit constitutional court in such matters. The peers of the realm were recognised as the great national inquest, by whom the verdict of 'Guilty' or 'Not Guilty' was to be pronounced, and the Commons themselves assumed the necessary office of standing forward as prosecutors in such cases.

In 'the Good Parliament,' which met in 1376, were established the main principles of parliamentary impeachment. Lords Latimer and Nevill, and three Commoners, Ellis, Peachy, and Bury, were solemnly tried and adjudicated on by the House of Lords, with the House of Commons as accusers.

They were found guilty by the Lords, and sentenced, some to expulsion from office, and some to fine and imprisonment.[1]

Lord Latimer had been Lord Chamberlain, and Lord Nevill had held another office. But the Commons aimed higher when they struck at Michael de la Pole, Earl of Suffolk, and Lord Chancellor.[2] He was impeached by the Commons, and convicted by the Lords, who sentenced him to forfeit all his grants from the Crown, and committed him to prison till he should have paid such a fine as King Richard should impose.

The valuable privilege which the Commons enjoyed of impeachment of powerful ministers at the bar of the Lords was in danger of lapsing, owing to its disuse during the arbitrary times of the Tudors. It was revived successfully in the reign of James I. in the case of Sir Giles Mompesson (1621). The famous Lord Bacon (who, alas, sullied the chancellorship by receiving bribes from suitors) was shortly after impeached by the Commons, convicted by the Lords, and sentenced to a fine of 40,000*l.*, to be imprisoned in the Tower of London during the King's pleasure, to be incapable of holding any public office, place, or employment, or come within the verge of the court.[3]

[1] Creasy's *Constitutional History of England*, vol. ii. chap. iii. pp. 199, 200.

[2] See Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. pp. 67, 68.

[3] James I. remitted the whole sentence passed upon Lord Bacon.

Lionel Cranfield, Earl of Middlesex, Lord High Treasurer of England, was, three years later, impeached for bribery and other misdemeanours by the Commons, and was convicted by the Lords, and sentenced to pay a fine of 50,000*l.* (afterwards reduced to 30,000*l.* by King James), to be imprisoned during pleasure, and to be for ever excluded from parliament and from the verge of the court.[1]

'This impeachment,' says Hallam,[2] 'was of the highest moment to the Commons, as it restored for ever that salutary constitutional right which the single precedent of Lord Bacon might have been insufficient to establish against the ministers of the Crown.'

James I., by virtue of the royal prerogative, seems to have had full power to remit the whole of the sentence on Lord Bacon. But the question arose whether, when an impeachment had been instituted by the Commons, a full pardon, under the great seal, from the sovereign, could be pleaded *in bar* of the further prosecution of the charges.

By the Act of Settlement (12 & 13 Will. III. chap. 2, sect. 3) it was finally decided that no pardon from the Crown, under the great seal, could be pleadable *in bar* of an impeachment by the Commons before the supreme tribunal of the Lords.

'The pretended responsibility of the Crown's advisers, accounted the palladium of our constitution, would be an idle mockery,' says Hallam,[3] 'if not only punishment could be averted, but inquiry frustrated.'

When the Lords have found the person accused by the Commons guilty, the constitutional practice is for the Lords to send a message to the Commons, intimating that they are prepared to give judgment if the Commons demand it. The Speaker, attended by the Commons, then proceeds to the bar of the House of Lords and demands judgment, and judgment is thereupon given by the Lords.

Of course, if the Neo-Radicals succeed in their crusade against the House of Lords, the power which the House of

[1] Lingard's *History of England*, vol. vi. chap. iii. p. 220.
[2] *Constitutional History of England*, vol. i. chap. vi. pp. 372, 358.
[3] *Ibid.* vol. ii. chap. xii. p. 416.

Commons possesses of impeaching ministers guilty of maladministration of State affairs would come to an 'end' with it. The Commons themselves could not try them. They have no judicial authority. They could not even swear a witness till quite recently; the only semblance of judicial authority which they possessed, that of investigating charges of corruption, treating, and bribery, in connection with their own elections, they deliberately parted with to the election judges, on the ground that they did not feel themselves a proper tribunal for its exercise.

CHAPTER XXII

THE BRITISH CONSTITUTION

THE liberty which we enjoy is due to the exquisite blending of the monarchical, the aristocratic, and the democratic elements of the Constitution in one harmonious whole.

That great Liberal statesman, Charles James Fox, laid it down [1] as a principle never to be swerved from, 'that every part of the British dominions ought to possess a government, in the constitution of which monarchy, aristocracy, and democracy were mutually blended and united.'

Edmund Burke, the great champion of human freedom, has left on record [2] his view of the Constitution.

'Our Constitution is like our island, which uses and restrains its subject sea; in vain the waves roar. In that Constitution I know, and exultingly I feel, both that I am free, and that I am not free dangerously to myself or to others. I know that no power on earth, acting as I ought to do, can touch my life, my liberty, or my property. I have that inward and dignified consciousness of my own security and independence which constitutes, and is the only thing which does constitute, the proud and comfortable sentiment of freedom in the human breast.'

[1] *Parliamentary History*. vol. xxix. 403. See Chap. XXIX. *infra*.

[2] Speech on Reform (in the House of Commons), May 7, 1782; Burke's *Works* (1826), vol. x. p. 104.

Referring to the nicely balanced elements of the Constitution Burke wrote [1]:—

'The whole scheme of our mixed Constitution is to *prevent any one of its principles from being carried as far as, taken by itself, and theoretically, it would go.* Allow that to be the true policy of the British system, then most of the faults with which that system stands charged will appear to be, not imperfections into which it has inadvertently fallen, but excellencies which it has studiously sought. To avoid the perfections of extreme, all its several parts are so constituted as not alone to answer their own several ends, but also each to limit and control the others; insomuch that, take which of the principles you please, you will find its operation checked and stopped at a certain point. In the British Constitution there is a perpetual treaty and compromise going on, sometimes openly, sometimes with less observation. . . . They who have acted, as in France they have done, upon a scheme wholly different, and who aim at the absolute and unlimited perfection of power in the popular part, can be of no service to us in any of our political arrangements.'

The Earl of Rosebery referred in glowing terms, in the peroration to a speech in the House of Lords in the year 1884,[2] to Edmund Burke, who thus spoke and wrote of the British Constitution, as 'a name ever to be honoured in either House of Parliament.'

Of Edmund Burke Mr. Lecky says[3]:—'No other politician, or writer, has thrown the light of so penetrating a genius on the nature and working of the British Constitution.'

'Our English Constitution,' said the Earl of Dufferin and Ava,[4] 'works better than any other in the world.'

'Nothing in the history of our Constitution,' says Sir Thomas Erskine May,[5] the late chief clerk of the House of Commons (afterwards Lord Farnborough), 'is more remark-

[1] 'Appeal from the New to the Old Whigs,' Burke's *Works*, vol. vi. (1826), p. 258, 259.

[2] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 957.

[3] *History of England*, vol. iii. chap. xi. p. 181.

[4] Hansard's *Parl. Debates*, third series, vol. cxxxi. 40.

[5] *Constitutional History of England*, vol. i. chap. v. p. 228.

able than *the permanence* of every institution forming part of the government of the country, while undergoing continual and often extraordinary changes in its powers, privileges, and influence.'

CHAPTER XXIII

THE MONARCHICAL ELEMENT

If I have faithfully represented the history of our Constitution,' says the historian Hallam,[1] 'its essential character will appear to be a monarchy greatly limited by law. There was nothing in the ancient Constitution of England—absolutely nothing—of a republican appearance. All seemed to grow out of the monarchy, and was referred to its advantage and honour.'

'No one,' says Sir Edward Creasy,[2] 'can read the Great Charter without feeling perfectly certain that Royalty is a fundamental portion and the primary governing power of our political system. Nor even when kings were solemnly deposed, as in the case of the second Edward and the second Richard, was kingship ever assailed.[3] A new sovereign was instantly placed in the room of the deposed one, in order that the nation might not be deprived for a moment of the monarchical head, that was reckoned politically indispensable.'

The advantages of our hereditary monarchy are obvious.

First amongst these advantages is the element of *stability*.

In the lifetime of nations what a waste of energy and time there seems to be on the settlement of the question, 'Who is to be the chief of the State?' Yet, until a nation has framed fixed rules for determining this question, it is in a state of chaos; it has not mastered the barest rudiments of civilisation. I fear we are not sufficiently thankful for the stability which the throne gives us. The fact that the law maps out the succession with infallible hand is of incalculable importance to the stability of the empire.

[1] Hallam's *Middle Ages*, vol. iii. chap. viii. part iii. p. 153.

[2] *Rise and Progress of the English Constitution*, chap. xiii. pp. 179, 180.

[3] See Chap. XIII. *supra*, as to the 'Commonwealth.'

The only restrictions on the descent of the Crown are these:—

First, the monarch must conform to the Church of England. Secondly, he must maintain inviolate the liberties of the subject.[1] The reasons for these restrictions will be found in the pages of English history, and especially in the records of the reign of King James II.

The presence on the throne of a monarch not of the Protestant faith was found, by actual experience, to be inconsistent with the preservation of the liberties of the subject; hence the restrictions imposed by the imperial legislature, not through bigotry, but through an instinct of self-preservation. 'I will maintain piety and justice' (*Je maintiendrai piété et justice*) was the motto of William the Silent, the founder of the House of Orange. On this William III. based his famous declaration:—'The Protestant religion and the liberties of England I will maintain.'

The Constitution has, in the first place, conferred on the sovereign the exclusive prerogative of calling and dismissing the legislative bodies, and also the power of putting a negative on their resolutions.

Secondly, it has confided to the sovereign the whole executive power in the nation.[2]

The sovereign is the fountain of honour. All dignities flow from his gift.

The sovereign is the fountain of justice. All judicial power is derived from him. He is also the fountain of mercy.

The sovereign is 'over all causes and all persons, ecclesiastical as well as civil, within these his dominions supreme.'[3] By virtue of his royal supremacy over the Established Church (united, through him, with the State) the sovereign selects the bishops.

The sovereign is the sole head of the army, navy, and

[1] See the Bill of Rights, 1 Will. and Mary, sess. 2, c. 2, and the Act of Settlement, 12 & 13 Will. III. cap. 2.

[2] De Lolme's *Constitution of England*, book ii. chap. i. p. 158.

[3] Bidding Prayer.

auxiliary forces. All commissions in these forces are held directly from him.

The ambassadors accredited to foreign States are appointed by the sovereign, on the recommendation of his ministers, and not by parliament.

It is part of the royal prerogative to conclude treaties of peace and to declare war. But in these things the sovereign acts on the advice of his ministers.

The essential advantage of the English government, above all those that have been called free (and which in many respects were but apparently so,) is that no person in England (except the princes of the blood royal) can entertain so much as a thought of ever rising to the level of the power charged with the execution of the laws. Whatever may be their rank, wealth, or influence, all persons (except princes of the royal house) are thoroughly convinced that they shall (in reality, as well as in name) continue to be *subjects*, and are thus compelled really to love, to defend, and to promote those laws which secure the liberty of the subject.[1]

The happy equality in the eye of the law of all men who are not actually peers reaches so high that the children of the sovereign herself, whatever may be their personal honours and precedence, are (unless they are formally created peers), in the eyes of the law, commoners, like other men. The privileges of the actual peerage have been a small price to pay for such a blessing as this.[2]

Lastly, the Constitution has invested the person whom it has made the sole head of the State with all the personal privileges, all the majesty, of which human dignities are capable. In the language of the law, the King is 'Sovereign Lord,'[3] and the people are his subjects; he is universal proprietor of the whole kingdom. Besides, his person is sacred and inviolable; and any attempt whatsoever against it is, in

[1] De Lolme's *Constitution of England*, book ii. chap. i. p. 167 note *a*).

[2] *Encyclopædia Britannica*, vol. xviii. p. 461 (title 'Peerage').

[3] 'Our Most Gracious Sovereign Lady, Queen Victoria.' Prayer for the Queen's Majesty.

the eye of the law, a crime equal to that of an attack against the whole State.[1]

Some people seem to forget that the offence of *high treason* still exists, weaving its subtle web round the subject; and that one of the best authorities on criminal law lays it down[2] as undoubtedly proved, that 'everyone commits a misdemeanour who is guilty of any contempt against the person of Her Majesty, or her royal dignity, by means of any contumelious, insulting, or disparaging words, acts, or gestures.'

It is a fundamental principle of the British Constitution that 'the King can do no wrong.' He acts upon the advice of his ministers, and upon them rests the responsibility of any maladministration.

The revolution of 1688 firmly established the constitutional principle, *lex est rex*, 'the law is king,' instead of the despotic Tudor and Stuart principle, *rex est lex*, 'the king is law.'

Our monarchy is not an absolute, but a limited monarchy, under which we are freer than we would be under a republic, and the stability of our Empire is much greater; while we have a principle in operation of which republics know little or nothing. For,

Secondly, amongst the advantages of an hereditary monarchy is the element of *unity*.

Firm loyalty to her who wears the crown is the magic zone which, encircling her world-wide domains, binds them together in one British Empire. Over the self-governing colonies, the imperial parliament (that is to say, Queen, Lords, and Commons) have nominally sway, but, so far as any sway is exercised, it is exercised by the Queen through her ministers at home and her governors in the colonies. If the

[1] De Lolme's *Constitution of England*, book ii. chap. i. p. 158. This writer was a native of Geneva, and, consequently, a republican, so that his testimony in favour of the British Constitution is all the more valuable.

[2] The late Mr. Justice Stephen, in his *Digest of the Criminal Law*, 5th edition (1894), part ii. chap. vi. article 70, p. 52.

monarchy were abolished, as in 1649, the British Empire would cease to exist. The magic zone would have been unloosed, and each self-governing colony would be driven to set up republican institutions, like our former colony, the United States of America, without the same justification.

The sole point of union is THE CROWN, not all 'the wit of man' can devise another.

'But for the Crown the British Empire would not hold together for a single week. The abolition of the British monarchy would be the signal for the immediate and irretrievable break up of the British dominions.' [1]

The impassive goddess, who personifies a republic, cannot attract to herself, as a living, loving woman can, the enthusiastic allegiance of multitudes of every race, and kindred, and tongue in every quarter of the globe.

The colonies would give short shrift to that part of Mr. Gladstone's followers who are treasonably disposed, and hiss the National Anthem.[2]

'There is one form of government which seems fitted to the people of these islands,' said the Earl of Rosebery in the House of Lords, when moving the vote of congratulation to the Queen on the birth of her great-grandson, the son of the Duke and Duchess of York,[3] 'and that is, the ancient, limited, historic monarchy under which we have lived for so many centuries. No more gratifying guarantee could be given of the permanence of that form of government, under which we live, than the fact that the Queen should be able to see around her no less than three heirs male in the direct line of that historic throne of which she is the ornament.'[4]

'The noble lord,' said the Marquess of Salisbury, when seconding the address,[5] 'has justly said that this form of government is the best for the people of these islands. I

[1] *The Baronage and the Senate*, by W. C. Macpherson (1893), p. 197. This work was written (from a colonial point of view) in Australia.

[2] As, for instance, at the Drill Hall, Portsmouth, at a meeting addressed by Sir William Harcourt, February 14, 1894.

[3] On June 28, 1894.

[4] *Times*, Friday, June 29, 1894.

[5] *Ibid.*

should expand that phrase by saying that it is the best-fitted, and the only possible form of government, for *our vast Empire*. It has an importance for us now, at the present day, even in excess of the value which it represented to our ancestors, because it is *the only centre* round which could rally the vast multitudes of different creeds and races which acknowledge the sway of Queen Victoria.'

But, thirdly, the alliances by intermarriage between the descendants and collateral relatives of the sovereign with the Crowned Heads of Europe have a salutary effect in promoting the blessings of peace amongst the nations of the earth. These royal personages are constantly interchanging hospitalities, and cementing friendships, *inter se*, and exercise a powerful influence in staving off hostility—much greater, indeed, than is generally supposed. The president of a republic, however much he may be personally respected, is outside the charmed circle of Royalty. His family influence is practically *nil*, so far as foreign powers are concerned.

The seats of the peers are grouped around the Throne, the Lords Spiritual, as the first estate of the realm, occupying the place of honour on the right hand of the sovereign. Prelates and nobles are the constitutional advisers of Her Majesty, as they were of the 'basileus' or king in Anglo-Saxon times, and as they were of the Anglo-Norman kings.

The very terms in which the royal assent is given carry us back to Anglo-Norman times, the Norman-French being particularly significant in using the word 'benevolence' in the phraseology of the assent to a Money Bill:—*La reyne remercie ses bons sujets, accepte leur benevolence, et ainsi le veult.*

The sovereign is advised by the prelates and nobles, when they reject a bill, that, in their opinion, it is not such a bill as to deserve the royal assent. It is a case, practically, of *la reyne s'avisera*, and not of *la reyne le veult.*

It has been suggested that the reason why the minority of Peers availed themselves of the privilege of entering a 'protest' against the action of the majority was, that *the Lords* conceived themselves, in their capacity of *hereditary coun-*

cillors of the Crown, liable to the consequences of having given ill advice.[1]

If the sovereign has for two centuries refrained from vetoing revolutionary bills, the reason, no doubt, is that his hereditary councillors, seated in a chamber of the legislature apart from the Commons, *have interposed their veto* on these bills, and thus spared the monarch the risk of exercising his or her undoubted prerogative, as a constituent part of Parliament.

'At present the Second Chamber makes it possible and easy for the Crown to maintain an absolute political neutrality. If the Second Chamber were abolished, the only hope of a minority in the country would be the resuscitation of the dormant prerogative of veto which resides in the Crown. If the majority in the country in favour of the legislation which excited opposition were a small one, the clamour of the minority for the exercise of that prerogative, if not irresistible, would, at any rate, place the Crown in an anomalous position. It would, in spite of itself, come to be looked upon as the possible leader of a party rather than as the neutral head of the executive. The uncompromising abolitionist will, perhaps, retort, that in that case the Crown must go the way of the House of Lords; but that course would in no way remedy the evil. The danger would affect any chief of the executive. Our Constitution is, in this respect, more democratic than that of any other country. If, therefore, the policy of abolition may reasonably be suspected of tending to endow the chief of the executive with powers analogous to those exercised by the president of the United States, it must be viewed with alarm.'[2]

The Commons are always called to the bar of the House of Lords to hear the royal assent given; they repair thither headed by their Speaker, who is attended by the serjeant-at-arms. The Commons stand at the bar of the House, while the Peers keep their seats in the body of it.[3]

[1] *Protests of the Lords*, by Professor Thorold Rogers, preface, p. xv.

[2] *The House of Lords; an Anomaly and a Danger*, by T. A. Spalding, LL.B., published for the Eighty Club, p. 35.

[3] The Commons complained, in Queen Elizabeth's time, that the Lords received them seated and with their hats on; but the Lords satis-

It is also standing at the bar of the House of Lords that the Commons, through their Speaker, ask for 'freedom of speech in debate' at the commencement of each parliament, the Lord Chancellor acting as the mouthpiece of the sovereign. The Lord Chancellor retains his seat, while addressing the Commons. Her Majesty's 'Great Council,' the Lords Spiritual and Temporal, also remain seated.

The whole of these proceedings, so eloquent of the fact that ours is a mixed Constitution, in which the monarchical, the aristocratic, and the democratic elements are blended, are conducted with a stately courtesy, which is a happy survival from ancient times.

CHAPTER XXIV

THE ARISTOCRATIC ELEMENT

EVEN in very early stages of society the evils of pure despotism and of pure democracy were severely felt and found to be nearly akin. The same violent bursts of passion, the same sudden changes of purpose, and the same blind fondness for favourites which are the vices of a single tyrant, were seen no less to prevail in the assemblies of the sovereign people.[1]

In absolute monarchies, likewise, men looked rather to the favour of the Sovereign than to the service of the State. In both cases, therefore, was felt the necessity of some check, and in both cases was soon established an assembly of chief men to take some part of the sovereign power, and to give moderation and steadiness to the government.

fied them that this was in accordance with parliamentary usage. D'Ewes' *Journals*, 39 & 40 Reg. Eliz. (1597), pp. 539, 540, 585.

[1] 'I am not for the uncontrolled government of a single chamber any more than I am for the uncontrolled government of any man. The temptation of absolute power is too great for any man, or body of men.' Lord Rosebery at Bradford. *Daily News*, October 29, 1894. 'I cannot conceive that it would be possible safely to govern this great Empire by one single House, with no check whatever upon it.'—The Earl of Kimberley at the Eighty Club. *Daily News*, December 7, 1894.

The hereditary principle has nearly everywhere prevailed over the elective. The modes have, indeed, been very various. These, however, are only different means to a common end—the hereditary transmission of power.[1]

A body of nobility is more peculiarly necessary in our mixed and compounded Constitution, in order to support the rights both of the Crown and people, by forming a barrier to withstand the encroachments of both. It is highly necessary that the body of nobles should have a distinct assembly, distinct deliberations, and distinct powers from the Commons.[2]

The great and composite qualities of the House of Lords, the eminence of its numerous members, their talents in debate and wide local influence, have made it too powerful to be rudely overborne by popular clamour.[3]

The Marquess of Salisbury has put the matter very clearly when he says[4] that 'there is no power in the constitution which can secure that the will of the nation shall be ascertained and obeyed, with anything approaching the accuracy of the provisions by which other democratic nations have guarded themselves, except the House of Lords.' 'The part which they fill in the process of "constitutional revision" is one which cannot be supplied.'

There would scarcely be a limit to the mischief a demoralised collection of self-seeking and ambitious *groups* might do if there were no Second Chamber to compel reflection and reconsideration, and to enforce a reference to the people.[5]

The House of Lords represented a majority of the people of this country when it refused to be a party to the judicial

[1] *The History of England*, by Lord Mahon (afterwards Earl Stanhope), vol. i. chap. x. pp. 537–8.

[2] Blackstone's *Commentaries on the Laws of England*, vol. i. book i. chap. ii. pp. 157–8 (Edition 1800).

[3] May's *Constitutional History of England*, vol. i. chap. v. p. 254.

[4] 'Constitutional Revision.' Article in the *National Review* for November 1892 (No. 117), pp. 298, 299.

[5] 'The House of Lords as a Constitutional Force.' *New Review*, March 1894 (No. 58), p. 263.

murder of King Charles I. by the meagre Rump of the Long Parliament.

It voiced the will of the majority when it took the lead in restoring the son of King Charles I. to the throne of his ancestors.

It opposed King James II.'s abuse of the royal prerogative, and brought about the Revolution of 1688, in the name of the majority of the nation.

It championed the cause of the majority when it formed the chief bulwark against the designs of the Pretender, and secured the triumph of the House of Hanover.

The nation supported it enthusiastically when it resisted the daring policy of Mr. Fox, who tried to place our Indian Empire and its vast resources under the heel of a Liberal oligarchy, with himself as supreme head.

At other times the House of Lords has reflected the views of a considerable minority of the nation; and *at no period* of its history can it be said with truth that *it represented nobody but itself.*

When the nation has set its heart upon any vital reform of which the House of Lords has disapproved, that House has not shrunk from postponing the measure, and so giving time for reflection to the people; when at length the reform has come, it has been of an enduring nature, because, through the intervention of the Peers, due consideration has been given to every argument against it.

'An Upper Chamber,' observes Sir George Trevelyan,[1] 'which will accept from ministers whom it detests no measure which has not behind it an irresistible mass of public opinion, has, sooner or later, the fate of those ministers in its hands. For, on the one hand, the friction generated by the process of forcing a bill through a reluctant House of Lords annoys and scandalises a nation, which soon grows tired of having a revolution once a twelvemonth; and, on the other hand, the inability of the cabinet to conduct through both Houses that continuous flow of legislation, which the

[1] *The Life and Letters of Lord Macaulay*, vol. ii. chap. viii. pp. 55, 56.

ever-changing necessities of a country like ours demand, alienates those among its more ardent supporters who take little account of its difficulties, and see only that it is unable to turn its bills into acts.' [1]

'The Liberal party, unfortunately, in its annual motion with regard to the House of Lords has committed itself to opposition to the hereditary principle. It will, however, probably fail to carry the constituencies with it in this respect, for those among the electorate who chiefly desire change are well aware that a nominated or elective *plutocrat* is more likely to be hostile to popular rights, and obstinate in his hostility, than is an hereditary peer.' [2]

The justification of the peerage is not the hereditary principle, but history. It is not the hereditary principle that justifies the peerage, but the peerage that justifies the hereditary principle.[3]

The best defence of the hereditary principle that I have seen will be found in the pages of Lord Mahon, afterwards Earl Stanhope [4]:—

'If a Senate be intended as a check on kings or on multitudes, it follows that to have all its members appointed either by the prerogative of the Crown [5] or by the election of the multitude is TO RECUR TO THAT VERY POWER WHICH IT WAS

[1] A good illustration of this was afforded when, three days before the rejection of the Evicted Tenants Bill by the Lords, at a largely attended meeting of evicted tenants held in Cork, on Saturday, August 11, 1894 (Mr. James O'Connor in the chair), Mr. Ahern, in proposing a resolution which said it was almost certain the House of Lords would throw out the Evicted Tenants Bill, said:—'They were for two years told that the evicted tenants question would be settled; but it was now only brought on at the fag end of the session. The promises made to them had come to nought. The Irish Parliamentary party had gone astray, and had been out-manœuvred by Sir William Harcourt; and it now remained for the evicted tenants to show of what they were made.' The *Times*, Monday, August 13, 1894.

[2] *Subjects of the Day*, No. 4, Feb. 1891; 'The House of Lords,' part viii., by Sir Charles Dilke, Bart., M.P., p. 100.

[3] See Macpherson's *Baronage and Senate*, p. 114.

[4] *History of England*, vol. i. chap. x. p. 538.

[5] *The inheritor of an hereditary peerage is absolutely independent of the Crown.* The influence of the Crown exhausts itself in the first creation, which it cannot recall.

WISHED TO CONTROL. It is to change the operation, but not to diminish the face of a single or a many-headed tyranny. Thus, therefore, he who desires to see an Upper House chosen by the people or appointed by the Crown for life seems to me utterly to mistake the true origin and object of the institution itself.'

'That John Smith should have the right to make laws, or mar them, simply because, for some reason more or less creditable, he happens to be called, not "John Smith, Esq.," but "the Right Hon. John, second, third, or fourth Baron Smith," is a contention that will not be maintained, in its crude completeness, anywhere outside a lunatic asylum.'[1]

This is the sort of stuff with which Sir T. Wemyss Reid thinks fit to regale his readers.

In the very same periodical in which it appears will be found an article by Mr. Goldwin Smith, in which the following passage occurs[2]:—

'In Austria and Prussia there are Upper Chambers combining the hereditary with a life element, and the plan seems to work smoothly in these cases.'

The hereditary peers in Austria and Prussia make laws simply on account of the accident of birth, simply because of their prefix 'baron' instead of 'herr'; and will Sir T. Wemyss Reid tell me that the only suitable habitat for the statesmen who conferred upon them this right, 'in its crude completeness,' is the inside of a 'lunatic asylum'? At present they are at large. Will he see to their incarceration? They have not been satisfied with merely 'contending' that Baron Schmidt should 'make laws,' they have given him, deliberately, the power to do it, and that in quite recent times. The Constitution of Prussia is forty-four years old;[3] the Constitution of Austria-Hungary is only twenty-seven years old.[4] In Hungary proper a large majority of the Upper House consists of hereditary peers.[5] The Germans and Austro-Hungarians

[1] *Nineteenth Century* for April, 1894 (No. 206), p. 553.
[2] *Ibid.* p. 544. [3] January 31, 1850. [4] December 21, 1867.
[5] 151 counts and 36 barons, against 84 life peers. *Almanach de Gotha* for 1895, p. 766.

are not supposed to be very silly people, and yet, in framing new Constitutions, they have adopted the hereditary principle.'

Sir T. Wemyss Reid's nickname for the hereditary principle—'an anachronism'—(an expression also used by Mr. Burt [1]) seems to me about as sensible as Dr. Johnson's nickname for a Billingsgate fish-wife, 'an old parallelogram.' How can he say that the House of Lords is 'out of date'—not 'up to date'—when the most powerful and intelligent nations of the continent of Europe have been adopting its vital principle? A 'nauseous and ludicrous anachronism' is only an 'anachronism' with vituperative adjectives. To my mind, Sir T. Wemyss Reid's article is 'nauseous and ludicrous.'

'No one can doubt,' says Lord Halsbury,[2] 'that a Second Chamber should itself, by its individual members, be deeply and permanently interested in the welfare of the nation. No mere philosophical interest in good government would suffice, but it should be so far identified with the interest of the whole people that any interference with their comfort and happiness should be felt by themselves in a real and practical sense; and it is not difficult to show that this condition is abundantly fulfilled by the House of Lords.'

Mr. Chamberlain well said at Leeds:—

'Hitherto, in the course of our history, what has distinguished English legislation from the legislation of every other country has been its continuity. (Hear, hear.) We have fought our fights with more or less respect for our opponents; and when the encounter has come to an end, and victory is declared on one side or the other, the defeated party has accepted the result, and has not tried afterwards to undo it. But if now, if in the future, the most extreme, the most drastic legislation, whether of one kind or another, whether progressive or reactionary, is to be forced upon a minority without concession, without compromise of any kind, believe me you will see a great change in our system, and we shall have no longer that sure and certain progress which has

[1] *Nineteenth Century* for April 1894 (No. 206), p. 547.
[2] In the *New Review* for March 1894 (No. 58), p. 265.

contributed to our strength and our greatness. We shall have frequent alternations, feverish agitations on the one hand, and fierce reaction on the other.' (Cheers.)[1]

Lord Salisbury, in his powerful speech at Edinburgh said:—[2]

'The law of the pendulum attaches to the House of Commons. It is at one time to the right, at another time to the left. At one time it resists all kinds of innovation, at another time it is at the mercy of any Radical minister of the day. When the pendulum swings to the left, when ministers have to purchase a majority by the sacrifice or the sale of principle, when it depends upon the amount which they are ready to give up whether the various groups of fanatics who are behind them go into the lobby or not, then is the moment of danger to all established institutions. It does not last long, the disillusion comes quickly, and men see the danger of the courses to which, for the moment, they had abandoned themselves. But while it lasts the danger is extreme. It is *to check the period of possible delusion* that Second Chambers exist; it is for the purpose of referring to the average and continuous judgment of the nation the excesses to which its representatives in particular circumstances may be inclined.'

The *Saturday Review* in a forcible article[3] says:—

'And what is the duty of a Second Chamber? In small matters it is to improve the details of legislation; and few honest politicians, whatever their views, will deny that bill after bill would leave the Lower House practically unworkable were it not for the improvements effected in the Upper. On the great scale it is to delay the passage of legislative changes until the balance of national opinion is so distinctly in their favour that there is no danger of reaction. We do not know whether anyone can deny—but we do know that no one whose word carries the slightest weight ever has denied—that the Lords have scrupulously observed both sides of this

[1] The *Times*, September 26, 1894.
[2] On October 30, 1894. See the *Times* of October 31, 1894.
[3] Of September 29, 1894.

their duty. And we have yet to meet anybody, with a command of argument, history, and politics, who can assign any other reason than this for the altogether unparalleled permanence of political reforms in England. If the ups-and-downs of Continental and American politics, the see-saws from democracy to tyranny, from protection to free trade and back again, are unknown here, it is possible that this may be due to something else than to the House of Lords. But it will be difficult for anyone, unless he takes refuge in mere twaddle and platitude about "the superior common sense of Englishmen," and so forth, to find a single other factor in the problem which is present here and absent there.

'Heredity is not more absurd than majority has been often shown to be. And it happens to be the only plan which the "wit of man" has yet hit on to secure a chamber of reference which shall escape the jobbery of selection, and the mere duplication of any form of election. That it may claim some other sanction than this—that the merit or ability of the fathers does give something like a presumption of some ability or merit in the sons—is true, but need not be too much relied on. The real thing is that, while the hereditary House, tempered by intelligent addition to its ranks, and, if necessary, by judicious exclusion, temporary or permanent, of the unfittest, provides a court of appeal as reasonable as any other *à priori*, and much more satisfactory as a matter of experience, no other provides anything else but a mongrel First Chamber under another name—a House of Commons, just a little varied by fancy franchises and double constituencies.'[1]

The *checks upon the hereditary principle* are numerous. 'Once a peerage always a peerage' is by no means true. Hardly a year passes that one or more peerages do not *become extinct.*

James I. created 62 peerages, Charles I. created 59, Charles II. 64, and James II. 8; being a total of 193 peerages created by these four Stuart kings. But during their reigns no fewer than 99 peerages became extinct. Therefore

[1] The *Saturday Review*, September 29, 1894.

the total net addition to the peerage during the four reigns was only 94.

The important antiquarian work of Sir Bernard Burke, the late 'Ulster King of Arms,' on 'Dormant, Abeyant, Forfeited, and Extinct Peerages,' consists of 599 pages of closely printed matter.

'At one time,' Sir Bernard writes, citing from another work of his, 'The Vicissitudes of Families,' 'in the reign of Elizabeth (Norfolk and Somerset having been attainted) the whole order of dukes became extinct, and remained so for fifty years.'

The extinction of peerages was assumed as the basis of a provision in the Act of Union between Great Britain and Ireland, it being enacted that one new Irish peerage can be created whenever three Irish peerages, in existence at the time of the Union between Great Britain and Ireland, have become extinct. The policy of the legislature being to reduce the number of Irish peerages to one hundred, it was further provided, that when the number of Irish peers, not being peers of the United Kingdom, is reduced to that minimum, one new Irish peerage may be created as often as an Irish peer becomes entitled, by descent or creation, to a peerage of the United Kingdom, and as often as an Irish peerage becomes extinct.

2. Another check upon the hereditary principle is the introduction of '*the representative principle* in relation to the peerages of *Scotland and Ireland*.'

The representative peers of Scotland and Ireland are the picked men of the Scottish and Irish peerages, elected, the Scottish representative peers for each Parliament, the Irish for life.

By the Act of Union of Scotland with England, the number of representative peers of Scotland was fixed at sixteen; by the Act of Union of Ireland with Great Britain, the number of representative peers of Ireland was fixed at twenty-eight, making a total of forty-four representative peers of Scotland and Ireland. The moment, however, that a Scottish peer is elevated to the peerage of the United Kingdom, he ceases to be

an elector of the sixteen representative peers of Scotland, and also ceases to be eligible as a representative peer of Scotland.[1]

The Irish peers are specially privileged in being qualified to be elected members of the House of Commons for any place in Great Britain, a privilege of which they have extensively availed themselves. The most conspicuous instance, perhaps, is that of Viscount Palmerston, prime minister, 1855–1858, and 1859–1865.[2] The singular result has been that some Irish peers have sat in the House of Lords as representatives of the Irish peerage, and some Irish peers have sat in the House of Commons as representatives of English and Scottish constituencies, the great bulk of the Irish peers, however, not being members of the imperial parliament.[3]

8. Another check upon the hereditary principle is the presence in the House of Lords of *the Lords Spiritual*, selected,

[1] The long controversy on this subject will be found recapitulated in detail in May's *Constitutional History*, vol. i. chap. v. pp. 238–241.

[2] He only escaped by refraining from taking the oath of an Irish peer. 'An Unfair Penalty on Peers,' in the *Nineteenth Century* for April 1894 (No. 206), p. 529.

[3] The last-mentioned fact makes it all the more difficult to understand on what possible grounds a proposal was not brought forward by Mr. Gladstone to revive the principle of Irish parliamentary government by Queen, Lords, and Commons, as in 'Grattan's Parliament,' so loudly extolled by the advocates of Home Rule. The Home Rule Bill was condemned, impartially, by British Radicals and Irish Loyalists for its ridiculous Upper Chamber, which would have been no check at all upon the Lower House, and yet would have been based upon a property qualification.

There is this to be said in favour of O'Connell's agitation for the Repeal of the Union, that it never aimed at more than government of Ireland by a local legislature composed of King, *Lords*, and Commons:

'As to the Repeal of the Union, I deny,' said O'Connell, 'that it can, by possibility, happen that, if a separate legislature were established in Ireland, it would be exclusively Catholic. Does not the hon. member[1] know that there are at present 105 *Irish peers*, of whom seven only are Catholics, and that the number of the latter cannot be increased except by the executive of England?'[2]

The card of the 'National Loyal Repeal Union' bore the inscription:—'Resolved unanimously, that the claims of any body of men, other than the King, *Lords*, and Commons of Ireland, to make laws to bind this kingdom are unconstitutional, illegal, and a grievance.'[3]

[1] Mr. Finch.

[2] Hansard's *Parl. Debates*, third series, vol. xxi. 418.

[3] *Annual Register* for 1843. p. 227. ('History.')

in consultation with the sovereign, by the prime minister of the day, who himself is the elect of the people.

'We have in this House,' said the Earl of Rosebery,[1] 'twenty-six bishops, every one of whom must have *won his way to his position in this House by sheer merit and by hard work.* It is perfectly impossible to say that these twenty-six eminent individuals are not, by reason of their past career, *an ornament to any assembly.*'

The Archbishop of Canterbury, as the spiritual head of the Church, and 'primate of All England,' ranks next to the princes of the blood; the Archbishop of York, as 'primate of England,' ranks next but one; the Lord Chancellor of Great Britain, the head of the law, being assigned a place, in the order of precedence, between the two primates.

The sees of Gloucester and Bristol, which were founded separately, as we have seen,[2] in King Henry VIII.'s time, were subsequently united, but a new diocese, that of Ripon, was created in 1836.

By the act which created the diocese of Manchester,[3] it was provided that the Archbishops of Canterbury and York, and the Bishops of London, Durham, and Winchester, should always receive a writ of summons to the House of Lords, but that 'the number of Lords Spiritual sitting and voting as Lords of Parliament' should 'not be increased.' It further provided that when there was a vacancy in the number of the other Lords Spiritual, the writ of summons should be issued to the bishop who had not been previously entitled to sit. The bishop last appointed was thus to receive no writ of summons from the Crown to sit in parliament until another vacancy occurred. 'The principle of this temporary exclusion of the junior bishop,' says Lord Farnborough,[4] 'though at first exposed to objections on the part of the Church, has since been found to be not without its advantages.

[1] In 1884, when moving for a select committee into the best means of promoting the efficiency of the House of Lords. Hansard's *Parl. Debates*, third series, vol. cclxxxix. 940.

[2] Chapter X. *supra*. [3] 10 & 11 Vict. cap. 108 (1847).

[4] May's *Constitutional History of England*, vol. i. chap. v. p. 250.

'It enables a bishop, recently inducted, to devote himself, without interruption, to the labours of his diocese; it relieves him from the expenses of a residence in London, at a time when they can be least conveniently borne.'

The same provisions have been contained in all subsequent acts creating new bishoprics.

While the Lords Temporal have multiplied eightfold since the Reformation, the Lords Spiritual have only been increased from twenty-one to twenty-six.[1]

'The place of the prelates in our venerable Constitution has hitherto been upheld by every statesman and by nearly all political parties. At the same time the Liberal policy of the legislature towards Roman Catholics and dissenters has served to protect the bishops from much religious animosity directed against the Church, of which they are the most prominent representatives. Again, the Church, by the zeal and earnestness with which, during the last [sixty] years, she has followed out her spiritual mission, has greatly extended her own moral influence among the people, and weakened the assaults of those who dissent from her doctrines. And the increased strength of the Church has fortified the position of the bishops. That they are an exception to the principle of hereditary right is, in the opinion of many, not without its theoretical advantages.'[2]

4. Another check upon the hereditary principle is the creation of *Lords of Appeal in Ordinary*, under section 6 of the Appellate Jurisdiction Act, 1876.[3] These Lords of Appeal in Ordinary were originally *ex-officio* Lords of Parliament, but by the Appellate Jurisdiction Act, 1887,[4] the Lords of Appeal in Ordinary became entitled to continue to sit in the House of Lords after their retirement from office.

5. Although seemingly paradoxical, the creation of hereditary peers forms, in the first instance, a check upon the

[1] May's *Constitutional History of England*, vol. i. chap. v. p. 250.
[2] *Ibid.* p. 252.
[3] 39 & 40 Vict. cap. 59.
[4] 50 & 51 Vict. cap. 70, sect. 2. Vide *infra*.

hereditary principle.[1] An ordinary peerage of the United Kingdom does not make its *first possessor* an 'hereditary legislator.' If he is without heirs, he is, in effect, *a life peer*. If he has heirs, he is none the less as fresh to the House of Lords as is a life peer. His legislatureship does *not* become *hereditary till* it has been *inherited*.

Every peer, too, by inheritance, who receives a *promotion in the peerage*, must be considered a second founder of his peerage. From a peer by inheritance he becomes a peer by creation. He is advanced in the peerage for the same reason that a new peer is created—for personal fitness. This is also true of peers who, like the present Duke of Richmond, receive a second peerage of the same rank as that which they already possess. Such peers are peers by inheritance, but they are also peers by creation.[2]

Peers sitting in parliament by virtue of an hereditary right share their privilege with so many who, by personal pretensions, have recently been placed beside them, that the hereditary principle becomes divested of exclusive power and invidious distinction.'[3]

'The British House of Lords,' said Charles James Fox, who was, perhaps, the foremost Liberal statesman of his age, 'stands on the hereditary, known, and acknowledged respect of the country for particular institutions.'[4] 'When I use the word "aristocracy," I do not mean it in the odious sense of "aristocrat," I mean it in its true sense, as an indispensably necessary part of a mixed Government, under a free Constitution.'[5] 'Aristocracy, I consider to be the proper poise of the Constitution, the balance that equalises and meliorates the powers of the two other extreme branches, and gives stability and firmness to the whole.'[6]

The Earl of Rosebery, in the course of the debate on his

[1] *The Baronage and the Senate*, by W. C. Macpherson, pp. 332, 333.
[2] *Ibid.* p. 334.
[3] May's *Constitutional History of England*, vol. i. chap. v. p. 237. A silly writer in the *Westminster Review* (for July 1894) says that the House of Lords is the only *purely hereditary* Upper House! (vol. cxlii. No. 1), p. 29.
[4] Speech in the House of Commons. *Parliamentary History*, vol. xxix. 412. [5] *Ibid*, 411. [6] *Ibid*. 409.

motion for the appointment of a select committee to 'inquire into the general condition' of the House of Lords, in 1884,[1] cited 'the eloquent words' of Edmund Burke :—

'We have a great heritage here—those who have *their own* honour, and the honour of *their ancestors*, and of *their posterity* to guard.'

Lord Brougham, another great Liberal statesman, has eloquently written :—

'*The House of Lords is ever ready to fling its weight into the scale of the existing Constitution*, and to prevent matters coming to an extremity between the Crown and people.

'Its veto upon all the measures that pass the Commons, the weight derived from its judicial functions, its general superiority in the capacity and learning required for excelling in debate, its more calm deliberations on all questions, unbiassed by mob clamour, its more statesmanlike views of both foreign and domestic policy, give the Upper House an extraordinary influence on all questions of national concernment. But to these sources of weight—the elements of the natural aristocracy—must be added the influence and, indeed, the direct power, bestowed by vast possessions, as well as illustrious rank ; and against this can only be set the popular connection of the other House, and its tenacious adherence to certain privileges with respect to the Lords.'[2]

Lord Macaulay has admirably expressed the intimate relations existing between the nobility and the commonalty :—

'The yeoman was not inclined to murmur at dignities to which his own children might rise. The grandee was not inclined to insult a class into which his own children must descend. There was here no line, like that which, in some countries, divided the patrician from the plebeian.'[3]

'In England,' says Sir James Mackintosh, 'the nobility are a small body, united to the mass by innumerable points of contact, receiving from it perpetually new infusions, and re-

[1] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 957.

[2] Lord Brougham's *Political Philosophy*, vol. iii., part iii. chap. xxix. pp. 304, 305.

[3] *History of England*, vol. i. chap. i. pp. 18, 19.

turning to it, undistinguished (save by courtesy appellations) and unprivileged, their children. In France the nobility formed an immense caste, insulated by every barrier that prejudice or policy could raise. The nobles are a senate of 500. The *noblesse* of France were a tribe of 200,000!

'Nobility is in England only hereditary so far as its professed objects—the support of an hereditary senate—demands. Nobility in France was as widely inheritable as its real purpose—the maintenance of a privileged caste—prescribed.'[1]

'The law,' observes the Bishop of Oxford,[2] 'gives to the nobleman's children and kinsmen no privilege which it does not give to the ordinary freeman, unless we regard certain acts of courtesy, which the law has recognised, as implying privilege. The English law does not regard the man of the most ancient and purest descent as entitled thereby to any right or privilege which is not shared by every freeman.'

'What,' asks Lord Mahon,[3] 'has been the cause of the continued usefulness and authority of the British Peerage? What has kept it firm and unshaken while so many neighbouring aristocracies have tottered to decay, or fallen before political convulsions? It is because *their families are constantly coming from the people and returning to the people*; —they have been an institution, and not a caste—not a separate and jealous oligarchy, like that of Venice, asserting for themselves and for all their descendants an inborn superiority over their brother-men. With us, how many sons of ploughmen, or of weavers, ennobled for their services, sit side by side with the loftiest of the Somersets and Howards! With us, the younger children of the peer return to the rank of commoners, and his grandchildren merge again completely in the great body of the people. Such is the true principle of

[1] *A Defence of the French Revolution* (*Vindiciæ Gallicæ*), by the Right Hon. Sir James Mackintosh, vol. iii. of his 'Miscellaneous Works,' p. 116.

[2] *Constitutional History of England*, by Dr. Stubbs, Bishop of Oxford (late Regius Professor of Modern History, Oxford), vol. ii. chap. xv. pp. 176, 177.

[3] *History of England*, vol. i. chap. x. pp. 540, 541. (The author became Earl Stanhope.)

usefulness and vitality in the peerage, and he who would limit its number is as much its enemy, and the country's, as he who endeavours to sap its hereditary honours.'

'I know not,' says De Tocqueville,[1] 'if there has ever existed any aristocracy so liberal as that of England—one which has, without interruption, supplied for the government of the country men so deserving and so enlightened.'

'The check which one House exercises over another,' said Lord John Russell,[2] 'is not invented for the purpose of bringing the two Houses into collision on every difference of opinion, but in order that measures shall be adopted that are satisfactory to both and beneficial to the country.'

'It has been a peculiar happiness of our Constitution,' says Hallam, 'that dissensions between Lords and Commons have so rarely occurred. This is owing to the happy graduation of ranks which renders the elder and younger sons of our nobility two links in the unsevered chain of society: the one trained in the school of popular rights, and accustomed, for a long portion of their lives, to regard the privileges of the House, whereof they form a part, full as much as those of their ancestors; the other falling, without hereditary distinction, into the class of other commoners, and mingling the sentiments natural to their birth and family affections with those that are more congenial to the whole community.'[3]

In France, in Spain, in Germany, wherever, in short, we look, the appellations of 'nobleman' and 'gentleman' have been strictly synonymous. Those entitled to bear them by descent, by tenure of land, by office, or royal creation, have formed a class distinguished by privileges inherent in their blood from ordinary freemen.

Marriage with noble families, or the purchase of military fiefs, or the participation of many civil offices, were, more or less, interdicted to the Commons of France and the Empire.

[1] *De la Démocratie en Amérique*, vol. ii. chap. vi. p. 108. Mr. Reeve (vol. ii. chap. ii. p. 59) has garbled this passage in his translation 'The English aristocracy is, *perhaps*, the most liberal, &c.'

[2] Hansard's *Parl. Debates*, third series, vol. xviii. 1095 (June 21, 1833).

[3] Hallam's *Constitutional History of England*, vol. iii. chap. xiii. pp. 15, 16.

Of these restrictions nothing, or next to nothing, was ever known in England. The law has never taken notice of 'gentlemen.' From the reign of Henry III., at least, the legal equality of all ranks below the peerage was, to every essential purpose, as complete as at present. Compare two writers, nearly contemporary, Bracton with Beaumanoir, and mark how the customs of England are distinguishable in this respect.[1]

There is no part, perhaps, of our Constitution so admirable as this *equality of civil rights*, this ISONOMIA, which the philosophers of ancient Greece only hoped to find in democratical government.[2] From the beginning our law has been no 'respecter of persons.' It screens not the gentleman of ancient lineage from the judgment of an ordinary jury, nor from ignominious punishment. It confers not, it never did confer, those unjust immunities from public burdens which the superior orders arrogated to themselves upon the Continent. Thus, while the privileges of our peers, as hereditary legislators of a free people, are incomparably more valuable and dignified in their nature, they are far less invidious in their exercise than those of any other nobility in Europe.

It is a singular providential circumstance that, in an age when the gradual march of civilisation and commerce was so little foreseen, our ancestors, deviating from the usages of neighbouring countries, should, as if deliberately, have guarded against that expansive force which, in bursting through obstacles, improvidently opposed, has scattered havoc over Europe.[3]

The political liberty of Englishmen was, even in the fifteenth century, the admiration of judicious foreigners.[4]

The late Charles Kingsley[5] has pointed out that 'the rhetorical phrases,' 'caste,' 'privileged classes,' 'aristocratic

[1] Bracton, lib. i. chap. vi.; Beaumanoir, chap. xlv.

[2] Herodotus, *Thalia*, chap. lxxx.

[3] Hallam's *Middle Ages*, vol. ii. chap. viii. part ii. pp. 346–348.

[4] Philip de Comines takes several opportunities of testifying his esteem for English government. See particularly L. iv. c. i. and L. v. c. xix.

[5] *Works*, vol. xvii. pp. 141, 148, 167.

exclusiveness,' bandied about again just now, as if they represented facts, 'have no application to English society.' 'There never was any *ancien régime* in England.' 'The hereditary principle is good, because it is founded in fact and nature.'

'I think,' he says, 'the giving intellect and civilisation its due weight, by means of plurality of votes, practically hopeless just now. But is there no body or influence in the State which may secure them due weight nevertheless? I think that there is, namely, the House of Lords.'[1]

'A body may be truly representative without being elected by those whom they represent. Now the House of Lords seems to me to represent all heritable property, real or personal'—'every man who has saved up anything, which he wishes to hand to his children'—'and, also, all heritable products of moral civilisation, such as hereditary independence, chivalry, &c. They represent, in one word, the hereditary principle. This no elective body can represent. It can only represent the *temporary wants and opinions* of the many, and the portion of their capital which is temporarily invested in trade, &c. It cannot represent the hereditary instinct, which binds man and the State to future generations'—'which makes a nation responsible in honour for the deeds of its ancestors, and, therefore, regardful of the obligation of international treaties.'

'1. Such a body must be non-elected, to keep it safe from the changes of temporary popular opinion. An elective Upper Chamber is a monster, which is certain to become a den of demagogues and money-lenders.

'2. It must be hereditary, because it is impossible for men to represent that which they are not themselves. I look on the peers, therefore, as what they are, in fact, not a caste, not even a class, but a certain number of specimens of a class, chosen out by the accident (and a very fair choice, because it prevents quarrels and popular intrigues) of being eldest sons.'

[1] *Charles Kingsley; his Letters and Memoirs of his Life.* Edited by his wife (1890), chap. xxii. p. 279. Written shortly before Mr. Disraeli's Reform Act.

'In most continental countries,' says the historian of the eighteenth century, 'an aristocracy has a tendency to become an isolated, and, at length an enervated caste, removed from the sympathies and occupations, and opposed to the interests of the community at large, despising, and, therefore, discrediting all active occupations, except those of a soldier, and thus connecting, in the minds of men, the idea of social rank with that of an idle and frivolous life. But in England the interests of the nobles, as a class, have been carefully and indissolubly interwoven with those of the people. They have never claimed for themselves any immunity from taxation. Their sons, except the eldest, have descended, after one or two generations, into the rank of commoners. Their eldest sons, before obtaining their titles, have usually made it a great object of their ambition to sit in the House of Commons; and have there acquired the tastes of popular politics.

'In the public school system, the peers and the lower gentry are united in the closest ties. The intermarriage of peers and commoners has always been legal and common. A constant stream of lawyers of brilliant talents, but often of humble birth, has poured into the Upper House, which is presided over by one of them, and the purely hereditary character of the body has been still further qualified by the introduction of bishops.' [1]

'The House of Lords,' observes Mr. Mackinnon, 'is a body sanctioned by the voice of the country, and the few privileges it may have are of no moment, and are granted to enable that assembly to carry on the business of the nation, as one of the constituted branches of the legislature. Admission to this body is a high and distinguished reward for merit, or professional services rendered to the State, without expense to the country.' [2]

'The only existing safeguard against despotism, other than the racial common sense of the English people,' says

[1] Lecky's *History of England in the Eighteenth Century*, vol. i. chap. ii. pp. 171, 172.

[2] *History of Civilisation*, by W. A. Mackinnon, F.R.S., M.P., vol. i. chap. xvi. p. 333.

Mr. Arnold White,[1] 'is a fragment of feudalism that has floated down from the middle ages to the edge of the twentieth century, in the shape of an hereditary house.'

'The House of Lords,' says Mr. Pike,[2] who writes 'without political bias,'[3] 'has lived the life of the nation and grown with the nation's growth. Even in its defects it has been a not unfaithful mirror of the country—not, indeed, of all the country's fleeting moods, but of the country's *matured decisions* and accomplished deeds.'

Mr. Sheldon Amos, a pronounced Radical, says[4]:—

'Though, in ordinary cases, the opinion of the House of Commons is, at present, more decisive of the fate of a ministry than that of the House of Lords, yet still there are circumstances when a decisive judgment, pronounced by the House of Lords, in respect of confidence in the ministry, will be taken for the voice of parliament and the country.'

'It is incredibly difficult,' says the late Mr. Walter Bagehot,[5] a well-known Liberal, 'to get a Revising Assembly, because it is difficult to find a class of respected revisers. A federal Senate, a Second House, which represents State unity, has its advantage; it embodies a feeling at the root of society, a feeling which is older than complicated politics, which is stronger, a thousand times over, than common political feelings—the local feeling.

'The order of nobility is of great use, not only for what it creates, but for what it prevents. It prevents the rule of wealth—the religion of gold. This is the obvious and national idol of the Anglo-Saxon.'[6]

'The House of Lords is independent. It would not be powerful—it would not be possible—unless it were known to be independent.'[7]

[1] Preface to *The English Democracy, its Promises and Perils*, p. v.
[2] *Constitutional History of the House of Lords*, chap. xv. pp. 389, 391.
[3] *Ibid.* preface, p. ix.
[4] *Fifty Years of the English Constitution*, chap. iii. sect. 2, p. 344. 'The House of Lords has shown itself as plastic and modifiable as all parts of a living structure must be.' *Ibid.* pp. 21,122.
[5] *The English Constitution* (No. 4, 'The House of Lords'), p. 111.
[6] *Ibid.* p. 90.
[7] *Ibid.* p. 112.

'The House of Lords, as a body, is accessible to no social bribe. And this in our day is no light matter.[1]

'They have no constituency to fear or wheedle; they have the best means of forming a disinterested and cool judgment of any class in the country.[2]

'The House of Lords, besides independence to revise judicially, and position to revise effectually, has leisure to revise intellectually.

'These are great merits, and, considering how difficult it is to get a good Second Chamber, and how much, with our present First Chamber, we need a Second, we may well be thankful for them.'[3]

The distinction of the peers of the realm, as a separate class, by privileges confined to themselves, personally, as Peers and not extending to any others, was first, apparently, clearly established by a statute of Edward III. to which all the other subjects of the realm gave their assent.[4]

The confinement of the privileges of peerage to those called 'The Peers of the Realm,' as a personal privilege, giving no privilege, or even legal rank, to their families, and moulding all who have not that privilege, however high their birth, into the mass of the Commons, has been considered as an important feature in the Constitution of the Government of England.[5]

'It is not a natural, or, in most countries, a common thing for those large classes who possess all the means of enjoyment and luxury, who have the world before them to choose from, and who have never known the pressure of want or of necessity, to devote themselves to long, painful, and plodding drudgery, to incur all the responsibilities, anxiety, calumny, ingratitude, and bondage of public life. The forms of useful labour which are unremunerative to the labourer are so numerous, the force of the example of the higher classes is so great, the advantages of independent circumstances for the prosecution of many

[1] *The English Constitution*, by Walter Bagehot, p. 112.
[2] *Ibid.* [3] *Ibid.* p. 113.
[4] *First Report of the Lords' Committee on 'The Dignity of a Peer,'* p. 313. [5] *Ibid.* p. 314.

kinds of labour are so inestimable, and, in public life especially, such circumstances assist men so powerfully in resisting the most fatal temptations, that the existence of laborious tastes and habits among the richer classes is of the utmost value to the community. The formation of an unpaid magistracy and the great governing duties thrown upon the House of Lords, combined with the vast territorial possessions and the country tastes of the upper classes, have made the gratuitous discharge of judicial, legislative, and administrative functions the natural accompaniment of a considerable social position, while the retrospective habits, which an aristocracy creates, perpetuate and intensify the feelings of an honourable ambition. The memory of great ancestors, and the desire not to suffer a great name to fade, become an incentive of the most powerful kind. A point of honour conducive to exertion is created, and men learn to associate the idea of active patriotic labour with that of the social condition they deem most desirable. A body of men is thus formed who, with circumstances peculiarly favourable for the successful prosecution of important unremunerative labours, combine dispositions and habits eminently laborious, and who have, at the same time, an unrivalled power of infusing by their example a love of labour into the whole community. It can hardly, I think, be denied that in no other country has so large an amount of salutary labour been gratuitously accomplished by the upper classes as in England. The impulse, which was first given in the sphere of public life, has gradually extended through many others; and, in addition to many statesmen, orators, or soldiers, in addition to many men who have exhibited an admirable administrative skill in the management of vast properties and the improvement of numerous dependents, the English aristocracy has been extremely rich in men who, as poets, historians, art critics, linguists, philologists, antiquaries, or men of science, have attained a great, or at least a respectable eminence. The peers in England have been specially connected with two classes. They are the natural representatives of the whole body of country gentlemen, while from their great wealth, and their town lives, they are intimately connected with that

important and rapidly increasing class who have amassed, or inherited, large fortunes from commerce or manufactures, whose politics, during the early Hanoverian period, they steadily represented. It will be found, I think, that the House of Lords, even when most Tory, has been more liberal than the first class, and has produced, in proportion to its numbers, more political talent than the second.'[1]

The strength of the House of Lords rests a great deal upon the local popularity of its individual members. Most counties possess one or two peers who are extremely popular, and who bring home to the people of their localities, as nothing else could do, that an hereditary landowner may be a very proper person to have a seat in the legislature. But it follows from this, that to have a large number of peers scattered over the country is a source of strength to the House.[2]

As landowners the nobility bear very considerable burdens, contributing heavily to taxation, and still more to the local rates; and the tendency of Radical legislation is to increase their burdens by the taxation of 'ground values'; by the theory of 'betterment,' &c. As capitalists they contribute largely to the well being of the State by the employment of labour. The number of the 'unemployed' would be greatly augmented without them. The tendency of Radical legislation is to increase the burdens of capitalists by a graduated income tax and the substitution, generally, of direct instead of indirect taxation.

The aristocracy are the leaders of the various forces of the Crown—the navy, army, and reserve forces—in the case of the reserve forces giving their valuable services gratuitously, and often raising whole battalions of volunteers from their estates, or employés, 'for the military defence of the realm.'

As magistrates, lord lieutenants, and deputy lieutenants they assist in 'the maintenance of order' and 'the administration of the law' in their several localities. They are infinitely preferred by our subject-races to commoners as

[1] Lecky's *History of England*, vol. i. chap. ii. pp. 173, 174, 175.

[2] *Subjects of the Day* (No. 4, February 1891), 'The House of Lords,' part. v., by the Earl of Pembroke, p. 49.

viceroys of India, and governors of our colonial possessions. Only the other day a member of the House of Lords had to be substituted for a commoner, as viceroy of India.[1]

As ambassadors our peers are well received at foreign courts. Take, for example, the Earl of Dufferin and Ava—a most acceptable viceroy of India and governor-general of Canada—who has been our ambassador at St. Petersburg, at Constantinople, and now at Paris.

The subject is a tempting one, and it would be easy to enlarge upon it.

CHAPTER XXV

THE DEMOCRATIC ELEMENT

ENGLISHMEN are asked, with cool effrontery, to accept the infallibility of the House of Commons, one of the most fallible bodies in existence.

'But for the determination of the House of Lords,' says that eminent Liberal, Lord Brougham,[2] 'to resist them, many measures of crude and hasty legislation would have passed in almost every parliament.'

'Recent events,' says the Earl of Donoughmore,[3] 'have proved to demonstration that, without such control as can be wielded by an independent assembly like the House of Lords, there is absolutely, under our *régime*, no means of forestalling the adoption of hasty legislation, conceived in error or panic, and forced upon the House of Commons by a passing wave of popular excitement. In Switzerland we have the Referendum; in the United States there is the Senate; and again, the further protection from the fact that America enjoys a written Constitution, and that the decision of the Supreme Court overrides that of the legislature, should it attempt any infringement of that Constitution.'

[1] The Earl of Elgin for Sir Henry Norman.
[2] *Political Philosophy*, vol. ii. part ii. chap. vi. p. 58.
[3] In the *New Review* for March, 1894 (No. 58), pp. 275, 276.

'How many of the safeguards of the United States have we?' asks Lord Ashbourne.[1] 'If we had no House of Lords, what check would there be against hasty legislation? What obstacle would oppose the wild gusts of popular passion, or withstand the dangerous, unstable, and varying demands of an imperious minister, with a small and composite majority behind him?'

Legislation would be utterly chaotic if it were not for the legislative 'appellate jurisdiction' of the House of Lords. It contains the heads of various departments of the State, without whom the State would be shorn of much of its strength; and what is almost of equal importance, the ex-heads of these departments, who remain members of the House of Lords years after their former colleagues have passed away from the House of Commons into private life, the turmoil of contested elections not being any longer congenial to their tastes. The strict principle of representation deprives the House of Commons of the presence of these Nestors of debate.

The gag, *the closure*, and *the guillotine*, which have been used for the purpose of forcing measures through the House of Commons, are quite unknown in the House of Lords. And these mechanical contrivances have been freely used for the purpose of forcing the views of majorities of Irishmen, Scotchmen, and Welshmen down the throats of Englishmen!

Mr. Thorold Rogers well says[2]:—'A tongue-tied "parliament" is a contradiction in terms.'

'The right of free speech' is 'the fundamental privilege of parliament.'[3] Even in the most arbitrary times, the House of Lords 'very rarely punished its members for freedom of speech.'[4]

'The introduction of the closure,' says Mr. Bryce, 'and the way the closure is worked, makes the House of Commons a totally different body from what it was before, and renders

[1] In the *New Review* for March 1894 (No. 58), pp. 268, 269.
[2] *Protests of the Lords*, preface, p. viii.
[3] *Ibid.* pp. x and xxvi.
[4] *Ibid.* p. vii.

it necessary to provide safeguards against the dangers of precipitate action.' [1]

'An immense object-lesson,' says Mr. Stead, 'has been afforded the country of the ease with which the House of Commons can be gagged and paralysed. The guillotine in the Commons may prove to be at once the justification and the salvation of the House of Lords.' [2]

It would have a salutary effect if it were generally understood that until 'one vote' has 'one value,' whenever a measure disapproved of by 'the predominant partner,' [3] was forced through the House of Commons by the application of the guillotine, the House of Lords would reject it.

I shall be no little pleased if the issue, whether the House of Lords is justified in rejecting a bill, on account of the application to it of the guillotine—a course of action which the *Speaker* [4] considers 'monstrous'—be submitted to the electors.

'For the last two years we have been living under a Government supported by the novel system of "log-rolling,"' says Lord Penzance.

'In Canada a man oftentimes cuts his own timber, but is not strong enough to "roll" it down to the waterside. So his neighbours come in force to "roll" his "logs" for him, on the understanding that he, in turn, shall help to "roll" theirs. This system has been baptized by the name of "*log-rolling*"; and it is now, for the first time, applied to politics in this country, with results that, but for the House of Lords, would have been simply disastrous.

'Observe what it involves. Three or four sections of the legislative body have each their own special ends to compass (each end being independent of the others) supported by a

[1] The Right Hon. James Bryce, M.P., in the debate on Mr. Labouchère's motion, May 17, 1889. Hansard's *Parl. Debates*, third series, vol. ccxxxvi. 479.

[2] *The Review of Reviews* for September, 1893.

[3] The Irish Coercion Act, which Mr. Balfour carried by means of the guillotine, *was approved* by 'the predominant partner.' Indeed, it was only opposed by the Nationalist faction, an insignificant minority, whose unscrupulous tactics in opposition called for repressive measures.

[4] Of August 4, 1894.

party large or small in the House. And they combine together to "roll" each other's "logs." It is no essential part of this system that any one log-owner should know or care anything about the logs of the others. No attempt is made to bring the whole body to one mind upon the successive subjects which are to be passed into law. Combined action is based, not upon unanimity, but upon bargain—I sell my own blind support of your measure to-day in return for your blind support of mine to-morrow. They act in unison, not because they think alike, but because they have found a short method of obtaining that support for their projects which has hitherto been sought by convincing other people. The sinister and dangerous character of the legislation which is likely to be born of this new system is well illustrated by what has taken place. Every one of the "logs," hitherto brought forward for "rolling," is of a coercive and predatory character. On all sides these attempts are such as would never have been supported and carried to a successful issue, as the measures of any genuine political party. The strong sense of right and justice, which is ingrained in the national character, would have wrecked any such as party measures. Can it be said with any justice that the majorities compounded by this system of "log-rolling" represent the voice of the nation? And can the peers be blamed for not surrendering their sense of what is right and just to the duty of respecting the national will?

'Meanwhile, the effect of the new system on all concerned is distinctly detrimental. The several members of the combination show their chief activity in scrambling and clamouring for a first place in the common programme. The ministers, driven hither and thither by grumbling and veiled threats, are heavily exercised in the ignoble task of devising soft assurances and skilful promises, and the time of the House is wasted by the introduction and discussion of what the Americans call "pop-gun" measures, which everyone knows it is impossible to pass.

'How long is such a system to be tolerated? The net result of the "log-rolling" system in the last two sessions has

been that we find our legislation practically determined by some score of Irish gentlemen whose love of this country and patriotic desire for her well-being have not hitherto been conspicuous. To this have we been reduced—the so-called Liberal party is no longer a party but a confederacy.

'Let the constituencies take these things to heart, and the "predominant partner" awake to his subordinate position.' [1]

'What, then,' asks Mr. Goldwin Smith, 'is the House of Commons? Does it retain any feature of a national council, or even of a deliberative assembly? Is it anything but a cockpit of faction? Are its debates anything but factious wrangles? Do not its manners too plainly bespeak its degradation. What is its character, even as a machine for doing business? . . . What is worst of all, it has totally lost its independence; *while it arrogates to itself omnipotence, it has itself become the slave of the "Caucus" and of the demagogue despot*, in whom the "Caucus" is incarnate. Members hardly keep up the pretence of voting according to their consciences. They openly avow their bondage. . . . The application of the screw has always been growing more severe till, at last, the representative has been reduced to the level, not only of a delegate, but of a political messenger.' [2]

'The House of Lords has acted as a sharp corrective to some of the risks which the public good runs, when parliamentary measures are manipulated by the representatives of sectional interests. It has never had a railway interest, or a public-house interest, or an interest averse to the reformation of the law, or, indeed, any of that importunate advocacy which disturbs the due course of political action and perverts the instrument of legislation to private and particular advantage.' [3]

'A structure of society like that of England, which brings the upper class into such political prominence that they usually

[1] *Times*, Wednesday, August 29, 1894; Letter of Lord Penzance to the Editor.

[2] Mr. Goldwin Smith in the *Nineteenth Century* (No. 205), for March 1894, pp. 363–4.

[3] *Protests of the Lords*, preface, p. xxvii.

furnish the popular candidates for election, has at least the advantage of saving the nation from that government by speculators, adventurers, and demagogues which is the gravest of all the evils to which representative institutions are liable.

'The supreme management of affairs may pass into the hands of men who are perfectly unprincipled, who seek only for personal aggrandisement, or personal notoriety, who have no real stake in the country, and who are perfectly reckless of its future and permanent interests. It would be difficult to exaggerate the dangers that may result from even a short period of such rule; and they have often driven nations to take refuge from their own representatives in the arms of despotism.'[1]

Mr. Chamberlain said at Leeds:—

'You will remember that all the rights and privileges that we most prize are the result of slow evolution, and have been carefully prepared and fully discussed before they were firmly established; and you will also bear in mind that we are now, for the first time, in presence of new demands of a character so extraordinary—demands so crude, so rash, and so impracticable—that I do not hesitate to say that the older Radicals, the men who created Radicalism, would have stood aghast at them. (Cheers.) Those men who are glorious in our political history, and, above all, in the history of the Liberal party—their object was to raise the individual man (Hear, hear), to free him from trammels and from fetters, and to give him opportunity to develop his faculties and to make the most of his opportunities. (Hear, hear.)'

'And now comes the New Radical, and his object is to merge the individual in the State, to reduce all to one dead level of uniformity, in which the inefficient, and the thriftless, and the idle, are to be confounded and treated alike (cries of "No, no," and loud cheers)—are to be confounded and treated alike with the honest and the industrious, and the capable (Hear, hear), and by which all of us, rich and poor alike (Hear, hear), are to be fenced in with limitations and parliamentary restrictions. (Hear, hear.)'[2]

On both sides of the House members are frequently

[1] Lecky's *History of England*, vol. i. chap. ii. p. 176.
[2] The *Times*, Wednesday, September 26, 1894.

returned by such slender majorities, that only by some such system of proportional representation as Mr. Courtney recommends could the blot upon our representative system of a minority almost as numerous as the majority being entirely silenced, be redressed.

The minority can always secure representation on school-boards by piling up their votes on a candidate whom they like; but the cumulative vote does not apply to a parliamentary election.

The Marquess of Salisbury has dealt with this subject, in his pithy way, in his article on 'Constitutional Revision'[1]:—

'The smallness of the majority of electors, on whose votes great decisions turn, sometimes borders on the ludicrous. Let us, for instance, add together the numbers of British voters who, by leaning to one side, have, as we are told, decided this great controversy—have given to Ireland an independent executive which she has not had for 700 years, and have placed the neck of the Ulsterman under the heel of Archbishop Walsh.

'Adopting the language of those who treat the election as having turned upon Home Rule, if twenty-one of the constituencies which returned Home Rule members had shown a Unionist majority there would have been a Unionist majority in the House of Commons. The election would have been turned by the conversion of 765 electors in these twenty-one constituencies!'

Mr. Chamberlain said also at Leeds:—'336 men—one more than the minority—under this system would be more arbitrary than any autocrat that has ever existed. (Hear, hear.) Let me carry you a step further. We have got our majority. We have created a tyranny, with 336 tyrants, to rule over us, and you are asked to put the sacred liberties of this country, your lives, your property, absolutely at their disposal. Are you certain that this majority will ever be a British majority? (Cries of "No.") It must be what it has been before—a majority in which the balance is held by men whose character and proceedings are alien to the British spirit (Hear,

[1] *National Review*, November 1892 (No. 117), pp. 296-298.

hear, and cheers), by men who are subsidised by foreign gold (laughter), by men who may be nominated by a foreign organisation. (Hear, hear.)

'What sort of legislation, what sort of administration do you expect from a majority of this kind, from such a despotism, if you are weak enough to create it? It will be extravagant, it will probably be corrupt, it will make it hot for its enemies. It will take care of its friends, it will take care of itself. (Hear, hear.)

'What we have to fear is that a majority of this kind, created by the breath of public opinion, may be intoxicated by the power which is intrusted to it, may be led away by some unscrupulous or ambitious man, and may be led to take some fatal step, some step which, once taken, will be irrevocable, by which the bonds of Empire will be loosened, by which the foundations of our prosperity will be undermined, and by which our greatness will be for ever destroyed. (Cheers.)'[1]

The principle that a bare majority of the electors can return a member to parliament is productive of the strangest results. Who can say that a constituency is Liberal or Conservative, when the member (of either party) is *returned by the casting vote of the returning officer*? Yet this happened in Ashton-under-Lyne in 1886, when the poll was as follows:—

John Edmund Wentworth Addison, Q.C. (C.), 3,049.
Alexander Butler Rowley (G.), 3,049.

The mayor gave his casting vote for Mr. Addison, who had previously represented the borough.

I look upon Mr. Addison as an excellent member; but parties being exactly equal, his vote counted for two in a division! Half the voters, clearly, were unrepresented, save on the highly imaginative constitutional theory that a member, when returned, represents his opponents as well as his supporters.

The see-saw between Colonel Chester-Master and Mr.

[1] The *Times*, Wednesday, September 26, 1894.

Harry Lawson in the Cirencester division of Gloucestershire will be fresh in the recollection of everyone. There were, practically, three elections. In September, 1892, Mr. Winterbotham, a Unionist, who had 'found salvation in Home Rule,' died; and Colonel Chester-Master was returned by a majority of three votes over Mr. Lawson, being the gain of a seat to the Conservative party, counting two votes on a division.

The return was petitioned against, and the judges who tried the case struck off three votes from Colonel Chester-Master's poll, destroying his slender majority, and making the two candidates equal. This involved a fresh election, at which Mr. Lawson came in at the top of the poll by a majority of 242 over Colonel Chester-Master!

By 148 votes, in a constituency of 8,000, Mr. Jesse Collings defeated me at Ipswich; and was afterwards unseated, on petition, for bribery by his agents. He was then a strong supporter of Mr. Gladstone; and while awaiting the decision of the election judges (Mr. Justice Denman and Mr Justice Cave) he suddenly brought forward a motion on the question of 'three acres and a cow,' which led to the defeat of Lord Salisbury's Government.[1] If the decision of the election judges had been given a little sooner, Lord Salisbury's Government would have remained in office! To crown all, Mr. Jesse Collings, soon after, became an enthusiastic *Unionist*!

I might multiply illustrations of the fickleness of popular elections, but let these suffice.

How ridiculous, in view of all this, does Sir William Harcourt's statement at the Budget dinner on August 1, 1894, sound!—

'I venture to tell Lord Salisbury that a majority of *a single vote* in the House of Commons is a more accurate representation of the popular will than a majority of 400 in the House of Lords!'[2]

[1] See Hansard's *Parl. Debates*, third series, vol. cccii. 443–530 (26 Jan., 1886).

[2] *Daily News*, August 2, 1894.

CHAPTER XXVI

THE THREE ESTATES OF THE REALM

A WRITER in a well-known periodical[1] is so ignorant as to class 'the sovereign' amongst 'the three Estates of the Realm.' I am afraid, however, that the ignorance of elementary questions of constitutional law which he displays is not uncommon at the present day. Government by 'King, Lords, and Commons' is so ingrained into the public mind that there is an idea that these are the three Estates of the Realm!

People lose sight of the fact that this country is not a republic, but a monarchy, and that to mix up the sovereign with his (or her) subjects is contrary to the very notion of monarchical institutions. It is the sovereign who 'enacts'; but the monarchy is a limited monarchy; the United Kingdom is free; the Queen's subjects, therefore, through the three Estates of the Realm in parliament assembled, take the initiative in advising Her Majesty, and their assent is essential to the validity of Her Majesty's enactments.

All over Europe the thirteenth century saw the establishment of a system of 'Estates.' The various classes of the community, which had a separate social 'status' and a common political interest, became organised communities, and sent their representatives to swell the council of the nation.[2]

The primary sense of the word 'Estate' ('Status') is an order or condition into which men are classed by the institutions of society.

The three Estates of the Realm, '*tres Status regni Anglicæ*,' are, literally, the clergy, the nobility, and the commonalty. The Lords Spiritual represent the whole body of the clergy; the Lords Temporal the nobility, or, to use a wider phrase, the aristocracy; the Commons represent the commonalty.

[1] B. D. Mackenzie in the *Westminster Review* for January, 1894, vol. cxli. No. 1, pp. 68, 73.

[2] Professor Tout's 'Edward I.' chap. viii. (*Edward and the Three Estates*), p. 136. (1893.)

And thus the Lords Spiritual, Lords Temporal, and Commons came to be themselves styled 'the three Estates of the Realm.'

The bishops may be said, constructively, to represent the whole of the clergy, with whose grievances they are supposed to be best acquainted, and whose rights it is their peculiar duty to defend.[1]

Hallam says[2] that 'the Lords Temporal of England are identical with the estate of nobility.' But this is not true of the peerages of Scotland and Ireland, where a selection is made from amongst 'the baronage' for fit members for 'the Senate,' and it has been suggested that a similar selection should be made in England.[3]

From the rolls of parliament[4] we gather that it was customary to speak of the commonalty of the realm as 'the estate for which the Commons are now come to parliament.'

CHAPTER XXVII

THE TWO-CHAMBER, OR BICAMERAL SYSTEM

'I AM a Second-Chamber man,' said the Earl of Rosebery, in his now famous speech at Edinburgh,[5] when he vainly strove to whittle down the significance of his 'entire accord' with the Marquess of Salisbury, that 'before Irish Home Rule is conceded by the Imperial Parliament, England, as the predominant partner, will have to be convinced of its justice.'

The Earl of Rosebery, at Bradford, reaffirmed his preference for the bicameral system:—

[1] *Middle Ages*, vol. iii. chap. viii. part iii. p. 106, n. (b).

[2] *Ubi supra*.

[3] See Chap. XXIX. *infra*. 'The House of Lords was never intended to embrace the aristocracy, but to be representative of it.' *The Baronage and the Senate*, p. 13. 'A judicious selection from the Hereditary Peerage.' *Times*, March 15, 1894 (leading article). And see 'The Reform of the House of Lords,' No. III., in the *Times* of November 30, 1894.

[4] See e.g. *Rot. Parl.* vol. iii. p. 611, § 21. (9 Henry IV.)

[5] *Times*, Monday, March 19, 1894.

'I confess, quite freely, that I am a Second-Chamber man. In principle I am all for a Second Chamber.' [1]

Lord Rosebery does not stand alone in his opinion. A recent writer in the *Contemporary Review* [2] recognises 'the very general impression, even among Liberals, that a Second Chamber is necessary.'

Mr. Spalding [3] writes:—

'The legislatures of all civilised communities, republican or monarchical, prove that there is a universal consensus of opinion in favour of the existence of a Second Chamber of some sort; and, therefore, it may be safely assumed that, for the present, the question of government by a single Chamber is not within the range of practical politics.' The phrase, however, is an unfortunate one, used by Mr. Gladstone with reference to the Irish Church, which was brought 'within the range of political politics' by the Clerkenwell explosion!

But there are writers who advocate the unicameral or One-Chamber system.

A recent writer in the *Westminster Review* [4] says:—

'With the progress of education (!) it is most probable (!) that the idea of any advantage accruing from a dual form of legislature will disappear' (!).

'There is not,' says another writer in the *Westminster Review*,[5] 'a single reason in favour of *two* legislative chambers that does not apply, with greater force, in favour of *three*. If *one* check is good, *two* must be better, and *three* better still, and so on, like interminate decimals.'

An increase of the number of Houses beyond two gives no advantage which the bicameral plan does not afford, and introduces irreparable mischief by the complicated dissensions, the vacillations and the delays, which are inevitable when there are three or more legislative councils. The facilities

[1] *Daily News*, October 29, 1894.
[2] Alfred R. Wallace, No. 337, January 1894, p. 114.
[3] *The House of Lords; a Retrospect and a Forecast*, chap. i. p. 5.
[4] For July 1894 (vol. cxlii. No. 1), p. 31.
[5] B. D. Mackenzie in the *Westminster Review* for January 1894 (vol. cxli. No. 1), p. 75. The italics are in the original.

for corruption and intimidation are also fearfully augmented, and it becomes an easy matter for an adroit and ambitious politician to gain an ascendency in a weak house, out of many, and thereby to destroy the general free action of the political body. It is useful to compare, in this respect, the primary institutions of our own country with the different forms assumed by the national assemblies of other European nations in early times. For example, we shall find in mediæval Sweden *four* estates in four houses; in mediæval Spain and France *three* estates in three houses. And we shall find that of all the early free institutions of Europe our own alone have been permanent.[1]

I must here, parenthetically, allude to the survival of the Four-Chamber system in Russia, which is, otherwise, an absolutism.

Finland ceased to be an integral part of the kingdom of Sweden in 1809, being annexed to Russia; but it retained its old Constitution,[2] which was part of the constitution of Sweden before that date. Finland has *four* estates of the realm, the nobles, the clergy, the burgesses, and the peasants, who sit in four houses. Any alteration in the old Constitution would have led, after annexation, to the loss of constitutional government—to an absolutism, like the rest of the Russian empire.

The nobility in Finland are represented in the House of Lords by the heads of the noble families. The bishops sit by virtue of their office.

The established religion is that of the Evangelical Lutheran Church, under the Archbishop of Abo; 98 per cent. belong to this Church, the remaining 2 per cent. belonging to the Græco-Russian Church.[3]

The mere fact of the division of our parliament into two Houses, neither more nor less, has been of infinite importance in our constitutional history. We have escaped thereby the

[1] *The Rise and Progress of the British Constitution*, by Sir Edward Creasy, chap. xiii. p. 199.

[2] See the *Almanach de Gotha*, 1894, p. 1157.

[3] *Encyclopædia Britannica*, title ('Finland'), vol. ix. pp. 217, 218.

miseries which the instability, the violence, and the impassioned temerity of a single legislative assembly have ever produced when that form of government has been attempted, as it often was in the Italian Republics of the Middle Ages, as it was, for a short period, in Pennsylvania, and Georgia, and as it has been repeatedly essayed by revolutionary France, Spain, Naples, and Portugal, in our own time.

'The great political writers of the United States, Kent, Story, and Lieber, have exhausted the arguments on this topic, and have completely proved how essential a guarantee for orderly and permanent liberty is the principle of two Houses, or "the bicameral system," as it has been phrased by Jeremy Bentham.' [1]

'Practical knowledge alone can show the whole advantage of this Anglican principle,' says Professor Lieber,[2] 'according to which we equally discard the idea of three and four Houses, and of one House only. Both are equally, and essentially, non-Anglican. Although, however, practice alone can show the whole advantage that may be derived from the system of two Houses, it must be a striking fact to every inquirer in distant countries, that, not only has the system of two Houses historically developed itself in England, but it has been adopted by the United States in all the [44] [3] States, as well as the [5 3] now-existing Territories, and by all the British colonies, where local legislatures exist. We may mention even the African State of Liberia. *The bicameral system accompanies the English race, like the Common Law*, while no one attempt at introducing the uni-cameral system in larger countries has succeeded. The idea of one House flows from that of the unity of power so popular in France. The bicameral system is called by the advocates of democratic unity an aristocratic institution. In reality, it is a truly popular principle to insist on the protection of a legislature divided into two Houses.'

[1] *The Rise and Progress of the Constitution*, by Sir Edward Creasy chap. xiii. pp. 197, 198.

[2] *Civil Liberty and Self-Government*, p. 157.

[3] *Almanach de Gotha*, 1895, p. 721 (U.S.A.).

'If there be one lesson more than another which we learn from all history,' said Mr. Horsman,[1] Chief Secretary for Ireland under Lord Palmerston, 'it is this: that *the single rule of a popular assembly is both tyrannical and transitory.* The Government of a single Chamber has never been known to last long, and for a very obvious reason—because a single assembly, uncontrolled by any other independent power, soon breaks through all restraints. All forms of proceeding—standing orders, rules of practice, authorities, precedents—all are swept away by the exciting passions and interests of the day. And I lay down this position, which I challenge my hon. friend (Mr. Bright) to controvert, that the poorest peasant in the land has as great an interest in the existence and authority of a Second Chamber as in the existence and authority of the House of Commons itself. Destroy that Second Chamber, or reduce it to a nullity, and you have a despotism, or a republic.'

But even in republics a Second Chamber has been found necessary.

Shortly before the establishment of a Second Chamber in France, I was staying at Trouville, the well-known French seaside resort, and left my card on M. Thiers, who was then President of the French Republic, and who lived in a villa in Trouville. Next day a mounted equerry stopped at the door of my hotel, and delivered to me an invitation from M. Thiers to dine with him. I was then member for Salford, and the card contained after my name 'Membre du Parlement d'Angleterre.' I, of course, accepted the invitation. A Cabinet Council had been held at the villa that day, and I met the Cabinet Ministers at M. Thiers' hospitable board. The lady whom I took down to dinner was Mlle Dosne, the sister of Madame Thiers.

I received another invitation, shortly after, this time to a reception, and I had a long conversation with M. Thiers on the subject of the formation of a Second Chamber.

[1] In the debate on the Paper Duties in 1861. Hansard's *Parl Debates*, third series, vol. clxii. 2134-2150.

I was deeply interested in M. Thiers' preference for the bicameral system.[1]

Shortly after my return to England, I found from the papers that M. Thiers had adopted the bicameral system, which, with various modifications, has held its own in France ever since. The Senate is composed of 300 members, some of them life senators; but by the law of December 9, 1884, which abolishes life senatorships, the members will all eventually be chosen on a principle not unlike that underlying the late Metropolitan Board of Works. The 'Electoral College' includes (1) the deputies of departments; (2) members of the general council; (3) councillors of the arrondissements; and (4) delegates chosen from among the electors of the communes by each municipal council.

The Chamber of Deputies, on the other hand, is elected by universal suffrage.[2]

M. Challemel Lacour, in his speech from the chair of the French Senate, delivered after his re-election in 1894, pointed out as a gratifying proof of the progress the political education of the country was making, that, at the last French general election, little was heard about the necessity of abolishing the Senate, which formerly was the *cheval de bataille* of a certain school of politicians. He attributed this to the fact that public opinion understood and discerned more clearly the disadvantages and perils which might accrue from the dictatorship of a single assembly, even if it were an assembly of sages. 'If this sense of the danger of a single Chamber,' says Mr. Arnold White,[3] from whom I have taken this reference to passing events in France, 'be thus tacitly accepted by a people both more logical and more revolutionary than ourselves, there is no likelihood of a Second Chamber being abolished in the United Kingdom.'

[1] My visit to M. Thiers was, much to my amazement, recorded next day in the telegraphic summaries of the English press!

[2] See Dickinson's *Constitution of Foreign Parliaments*, 1890, pp. 46, 47. It was from the French model that Lord Dunraven got his *County Council* peers.

[3] *The English Democracy; its Promises and Perils*, chap. vii. p. 106.

Under the Home Rule system, the Union between Sweden and Norway, through the Crown, is in perpetual danger of being destroyed owing to the absurd mixture of the bicameral and unicameral systems which Norway presents. Sweden, on the other hand, has the bicameral system, and is perfectly content.

Under the Constitution of 1814[1] 114 representatives are elected for three years to the Storthing by the suffrage known as 'the suffrage of the Second Degree,' 38 for the towns and 76 for the country districts. The Storthing meets in February and elects one-fourth of its members to the Lagthing, the remaining three-fourths forming the Odelsthing. It is only by the free exercise of his royal veto that the King of Sweden and Norway is able to keep these turbulent bodies in order. Norway is ambitious of having consuls of its own accredited to foreign Powers, and this King Oscar, very sensibly, objects to. It is clear that, if Norway succeeds in cutting herself adrift from Sweden, one of the freest and most enlightened countries in the world, she will sink into comparative insignificance. But still, it can hardly be said that Norway is an example, pure and simple, of the unicameral system.

'Tis Greece, but living Greece no more,'

which furnishes the exception that proves the rule. Its Constitution was promulgated about thirty years ago. The single Chamber of this tiny nation is not, however, entrusted with the delicate task of electing a king. Associated with the deputies are an equal number of representatives elected *ad hoc*; and even then there must be a two-thirds majority.[2]

Two thousand years have flown since the scene closed on independent Greece, during which period, crouching beneath the despotism of the Roman, the Byzantine, and the Turkish Empires, she has been as naught among the nations. At length, in our own days, we have beheld her reappearance on the political stage; and the question naturally arises, what will be her future destiny? Is she to enjoy the blessings of

[1] See the *Almanach de Gotha*, 1895, p. 1262.
[2] See Dickinson's *Constitution of Foreign Parliaments*, p. 68.

concord and union among the various portions of her population? Is she to emulate ancient Hellas in arts, in arms, and in literature? Is she to escape the influence of the chill withering air of Northern despotism? These are questions we do not venture to answer, we hope for the best; but our hopes are not sanguine,[1] for instances of national rejuvenescence are rare in the annals of the world.[2]

Mr. Spalding[3] makes a very rash assertion:—

'Most European States have been compelled, in times which are quite recent, to remodel the constitution of their legislatures. These States boast of the possession of an aristocracy as ancient and as respectable as that of the United Kingdom; yet none of them have seen fit to adopt our system of an hereditary and Crown-nominated Upper House. In some cases the Second Chamber is purely elective; in others it is a composite body of elected and nominated members; and, in a third class, a small proportion of hereditary legislators is added to these two elements. But this proportion is quite insignificant, compared with the other constituents, and only serves to emphasise the difference between the Chambers in which it is found and our House of Lords.'

Mr. Spender[4] improves upon Mr. Spalding, for he says that 'every nation has strenuously avoided the example of our House of Lords.'

Let me recommend to Mr. Spalding and Mr. Spender a study of the Hungarian Reichstag.[5] It has a House of Magnates and a House of Representatives.

The 'House of Magnates,' or 'Upper House,' consists of 19 archdukes, 194 hereditary peers, 40 archbishops and

[1] 'I do not wish, having once been a Foreign Minister, to say anything which shall be disagreeable to the feelings of the Greek people, but I think nobody can imagine that the Greek Constitution has been a success.' Lord Salisbury at Edinburgh, October 30, 1894. See the *Times* of October 31, 1894.

[2] Keightley's *History of Greece*, closing paragraphs.

[3] *The House of Lords; a Retrospect and a Forecast*; introductory chapter, pp. 7, 8.

[4] *The House of Lords*, p. 24.

[5] See Dickinson's *Constitution of Foreign Parliaments* (1890), p. 14; and the *Almanach de Gotha* for 1895, p. 766.

bishops,[1] 84 life peers,[2] selected by the emperor on the recommendation of the Council of Ministers, and a few *ex-officio* members, the remainder being made up of dignitaries of the Greek, Roman Catholic, and Protestant Churches.

The hereditary peers fall under two designations, not unlike 'barons by tenure' and 'barons by writ'; the former having landed estates, and paying a ground-rent to the State of at least 3,000 florins, and the latter owing their hereditary seat in the Chamber of Magnates to the royal prerogative, exercised on the advice of the ministry.

It will be seen that the hereditary peers, so far from bearing a 'proportion quite insignificant compared with the other constituents,' form a clear majority of the House of Magnates of the Hungarian Reichstag.

With regard to the previous Constitution, the supreme power in the State was, subject to the kingly authority, vested in the Diet or General Assembly of the Orders. The prelates and magnates formed, as they do still, one Chamber. The Lower Chamber was, as now, composed of the deputies.[3]

The close resemblance of the whole system to ours will be apparent.

It may be said that the House of Magnates in Austria-Hungary has surrendered to the Lower House of that country on the question of the Civil Marriage Bill.

But, in the first place, if the Civil Marriage Bill has been accepted by the House of Magnates by the slender majority of 4, it vindicated its independence previously by rejecting the bill by a majority of 21.

In the second place, the Emperor Francis Joseph declined, prior to the second vote, to sanction the creation of a batch of new hereditary peers to swamp the Opposition in the House of Magnates, although this course was pressed upon him by Dr. Wekerle, at the head of a powerful majority in the Lower House, as the condition on which alone he would resume the

[1] A number in excess of our Lords Spiritual.

[2] There are about 74 in the House of Lords. May's *Constitutional History of England*, vol. i. chap. v. p. 238, n. (1).

[3] See Lord Brougham's *Political Philosophy*, vol. ii. part ii. chap. ix. pp. 88, 89.

position of premier. The emperor, on the other hand (like King William IV.), used his influence successfully to induce peers connected with the court to refrain from voting.

In the third place, the experiment had been tried of endeavouring to form a new ministry, with the Ban of Croatia, Count Khuen-Hedervary, as prime minister; but the Ban (like the Duke of Wellington) failed to get together a cabinet.

The only possible ministry was that of Dr. Wekerle (just as the only possible ministry in 1832 was that of Earl Grey).

The great majority of the nation and a majority of 3 to 1 in the Lower House were in favour of the Civil Marriage Bill, just as the great majority of the nation and a majority of 136 in the House of Commons were in favour of the Reform Bill.

If ever there was an occasion when an Upper House was bound, by every constitutional principle, to give way to the popular voice, that occasion was the second reading of the Civil Marriage Bill, when sent up a second time to the House of Magnates from the Lower House (just as the House of Lords was bound to give way in 1832, when the Reform Bill was sent up to them from the House of Commons the second time).

Hungary had a great charter of her own, called the '*Bulla aurea*.' It was obtained seven years after King John was forced by his barons to grant our Magna Charta.[1]

This only was needed to make the comparison complete.

In Austria the archdukes, hereditary nobles, and lords spiritual comprise 106 out of 245 members of the Upper House, the remainder being life peers nominated by the emperor.[2]

The hereditary principle is recognised in the Constitution of Prussia, which is about forty years old, the 'Chambres des Seigneurs' ('Herrenhaus') including '98 chefs de famille de la haute noblesse, comme membres héréditaires,'[3] the remainder

[1] Lord Brougham's *Political Philosophy*, vol. ii. part ii. chap. ix. p. 88.

[2] Dickinson's *Constitution of Foreign Parliaments*, p. 14. The Austrian Constitution, like that of Hungary, was promulgated finally in 1867.

[3] *Almanach de Gotha* for 1895, p. 675.

being life peers selected by the sovereign from various 'categories.'

The hereditary peers thus form about one-third of the House of Lords in Prussia, the most ambitious and successful State on the continent of Europe, certainly not 'a proportion quite insignificant.'

If Mr. Spalding wants a brand-new Constitution, which consecrates the aristocratic principle, he cannot do better than devote himself to the study of the Constitution of the Empire of Japan, promulgated on February 11, 1889. There is a Chamber of Peers and a Chamber of Representatives. The component parts of the Chamber of Peers are described in the 'Almanach de Gotha' for 1895 (p. 1100). The principle of representative peers is clearly recognised.

'La chambre des Pairs se compose des membres masculins et majeurs de la maison impériale (10), de tous les princes et marquis, âgés de plus de 25 ans, de la 5e partie de tous les comtes, vicomtes et barons de l'Empire qui ont atteint la 25me année, élus par leurs égaux pour 7 ans (139), de membres nommés à vie par l'Empereur, âgés de 30 ans au moins et dont le nombre ne doit pas dépasser celui de tous les membres de la noblesse (59), et de 44 membres âgés au moins de 30 ans, élus en leur propre sein par les 15 habitants masculins les plus imposés de chaque district d'administration, confirmés par l'Empereur pour 7 ans. Total 252.'

It is clear, therefore, that in this, *the most progressive and the most enlightened nation in Asia*, there is an Upper House, called into existence only five years ago, after a study of the most important European models, in which the hereditary peers greatly exceed in number the life peers and elected members, and without the princes of the blood could reject any measure passed by the Chamber of Representatives, and of which the life and elected members approved.

In addition to 10 princes of the blood, the national peerage consists of 11 princes, 24 marquesses, 76 counts, 324 viscounts, and 74 barons.

We have seen that the princes and marquesses sit in the House of Peers on attaining twenty-five, but the remainder of

the hereditary peers elect a fifth part of their number to represent them, i.e. 94 *representative peers are elected by* 474. This is analogous to the election of Scotch and Irish representative peers, pursuant to our two Acts of Union.[1]

To hear the New Radicals glorify the representative principle, one would imagine that all the Upper Houses in *the self-governing colonies* were, like the Lower, filled with the representatives of the people. But this is by no means so.

Take, for example, that old and enlightened colony New South Wales. The 'Constitution Act' was passed in 1855;[2] the Lower House, or Legislative Assembly, consists of 141 members returned by a large electorate, on a wide suffrage, the voting being by ballot, while the Upper House, or Legislative Council, consists of eighty members, appointed for life by the Crown.[3]

In New Zealand, under enactments dated 1852 and 1891, the Upper House, or Legislative Council, consists of forty-seven members, chosen by the governor for seven years (originally the term was for life). The Lower House, or House of Representatives, comprises seventy-four members, returned by a wide suffrage for as many constituencies.[4]

In Queensland the Constitution is regulated by 31 Vict. No. 38 (1859). The legislature is formed of two Houses of Parliament, the Legislative Council, or Upper House, and the Lower House, or Legislative Assembly. The members of the Legislative Council are nominated by the governor, and hold their offices for life. There are at present thirty-nine members. The Legislative Assembly consists of seventy-two members, elected by ballot under a wide suffrage.[5]

One of the most important of the self-governing colonies

[1] The Japanese nobility have shown their patriotic sentiments by subscribing 80,000,000 dollars for the national defence, and refusing to accept any interest for it. *Times*, August 23, 1894.

[2] 18 & 19 Vict. cap. 54.

[3] *Colonial Office List*, 1894, p. 182; *Almanach de Gotha* for 1894, title 'New South Wales.'

[4] *Colonial Office List*, 1894, pp. 191, 918; *Almanach de Gotha* for 1894, title 'New Zealand,' p. 919.

[5] *Colonial Office List*, 1894, p. 200; *Almanach de Gotha* for 1894, title 'Queensland,' p. 919.

is the Dominion of Canada, where a successful 'intercolonial conference' has been held, which will probably lead to the grouping of the Australian and South African colonies in similar 'Dominions.'[1] The supreme legislative power is vested in a parliament, consisting of the Queen, a Senate, and a House of Commons. The Senate consists of eighty members, nominated for life by the governor-general.

The House of Commons consists (or shortly will consist) of 213 members, 92 representing Ontario, 65 Quebec, 20 Nova Scotia, 14 New Brunswick, 7 Manitoba, 6 British Columbia, 5 Prince Edward Island, and 4 The Territories. Election is by ballot, with a franchise almost equal to manhood suffrage.[2]

In these colonies the representative principle in the sense of popular election has no place at all in the constitution of the Upper House. It consists of nominees of the Crown, chosen, generally, through its legate.

'Several of the colonial Upper Houses have, by resistance to the popular will, brought their colonies nearer revolution than has the House of Lords ever brought the United Kingdom.'[3]

'The argument' that 'our Bicameral system was the result of chance,' is thus pungently satirised by the author of 'The House of Lords; an Anomaly and a Danger'[4]:—

'If the argument that our Bicameral system was the result of chance had any value, it would be dangerous to use it, since all the evidence upon which it is based might be urged with equal, if not greater, cogency to prove that the House of Commons was the accident, and not the House of Lords. The House of Lords was the outcome of a most elaborate and essentially practical system of government; the House of Commons was *an offshoot* of the great council, which sprang up and developed independent functions to

[1] See the *Observer* for July 22, 1894.

[2] *Colonial Office List*, 1894, p. 52, *Almanach de Gotha* for 1894, title 'Canada.'

[3] Sir Charles Dilke, M.P., in Routledge's *Subjects of the Day*, 1891, p. 100.

[4] Published by the Eighty Club. Written by T. A. Spalding, LL.B. 1894), pp. 7, 8.

meet the needs of an altering state of civilisation. To regard either *the offspring* or *the parent* as the result of accident, is to urge a palpably insufficient excuse for avoiding the labour which is involved in an examination of the underlying causes which co-operate in the evolution of legislatures.'

It has been noticed of late that a debate in either House of Parliament seldom alters a vote, yet the discussion, when happily raised on the true issue, has such an effect on the public mind, that a policy formally approved by the vote of a large majority is often condemned to practical nullity. This nullity is sometimes expressed by a counter-vote in the other House of Parliament, and in this way the bifurcation of the legislature into two Houses has rather the effect of fortifying the popular will.[1]

Perhaps the most conspicuous vindication of the Bicameral principle was in the Home Rule Bill itself, which provided for the creation of *two* Chambers to sit in Dublin, the one to be styled 'the Legislative Council,' and the other 'the Legislative Assembly'—terms derived from the terminology of the British colonies. But both these Chambers were to be constituted on the elective principle, the Second Chamber by electors holding a property qualification.

Mr. Stead writes[2]:—

'Ministers have done more than any men in this century to convert the electorate to a belief that a Second Chamber is a necessity. They have insisted on setting up a Second Chamber in Ireland, and Mr. Gladstone has spent all his eloquence in support of Second Chambers.'

Before leaving the subject of Second Chambers it may be well to place before my readers the view expressed by the Earl of Rosebery in the House of Lords, as recently as 1884,[3] with respect to *elective* Second Chambers:—

'We have had great experience of *elective* Second Chambers, and we know that, as a rule, elective Second Chambers are *not very valuable* institutions.'

[1] *Fifty Years of the English Constitution*, 1830–1880, by Sheldon Amos, p. 465.

[2] *Review of Reviews* for September 1893.

[3] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 942.

CHAPTER XXVIII

GERRYMANDERING THE CONSTITUTION

ALL attempts at reconstructing the House of Lords on a democratic basis may be at once discarded as impracticable, and alien to the genius of our mixed constitution. It would destroy the 'balance' between its three elements.

The democratic principle is already represented fully in the House of Commons, and the more fully it is represented in that House, the more essential it is, according to the vital 'compromise'[1] of the Constitution, that the aristocratic principle should be represented fully in the House of Lords.

It is ridiculous to try to make the House of Lords a weak version of the House of Commons.

Two essential points in the constitution and nature of the House of Lords have enabled it to perform its duty as a Second Chamber well. First, the fact that its constitution and, in a certain sense, its duty are altogether distinct from those of the House of Commons; and, secondly, the fact that its members are responsible to no electorate, but only to the nation as a whole. These two characteristics, I believe, we must seek to preserve; and on this ground alone I should be opposed to all schemes for making it an *elected* House.

The House of Commons would be more jealous of such an assembly than of the present House, because it would regard it as trenching upon its own character and function of popular representation. Broad as its popular basis might be, that of the House of Commons would always be broader, and it would be felt *intolerable that the smaller electorate should overrule the larger one.* Popular representation is the function of the House of Commons. The House of Lords should claim to be representative of nothing but a large portion of the patriotism, good sense, talent, and independent opinion of the country.[2]

[1] The phrase is Burke's. See Chap. XXII. *supra.*

[2] *Subjects of the Day* (No. 4, Feb. 1891), 'The House of Lords,' part v., by the Earl of Pembroke, p. 50.

When Mr. Macpherson gets upon the subject of the Lords Spiritual, he seems to me to forget that the union of Church and State is one of the fundamental principles of the British Constitution, and that it is in virtue of that union that the Lords Spiritual occupy seats in parliament. When the monasteries were dissolved in the reign of Henry VIII., the mitred abbots and priors, as we have seen,[1] ceased to be summoned to the House of Lords. The abbot of Westminster sat during the abnormal reign of Queen Mary, and put in an appearance in the first parliament of Queen Elizabeth, but he soon found that he was not wanted, and never sat again.

By the Fourth Article of the Act of Union the Church of Ireland was to be represented in the House of Lords by four prelates, sitting 'by rotation of sessions.' But by the Irish Church Act, when it disestablished and disendowed the Church of Ireland, the representation of the Irish hierarchy in the House of Lords was put an end to.

The Church of England, which includes the Church in Wales, is an Established Church, and therefore contributes two archbishops and twenty-four bishops to the House of Lords. If the Church in Wales were disestablished and disendowed, the four Welsh bishoprics would inevitably be deprived of representation amongst the Lords Spiritual by four prelates.

It is an utterly incongruous idea to associate representatives of non-established communions with the Lords Spiritual. It is, indeed, farcical—a travesty of the Constitution; and how so generally sensible a man as Mr. Macpherson can propose it I am at a loss to conceive.

The Edinburgh Reviewer[2] points out how little likely this part of Mr. Macpherson's scheme is to meet with approval:—'But while in theory it may seem desirable not only to retain the bishops of the Church of England in the House of Peers, but to add to them representatives of other religious

[1] Chap. X. *supra*.

[2] P. 486 of vol. clxxviii., October 1893. Critique of the 'Baronage and the Senate.'

bodies, in practice such a scheme is unworkable. . . . To add a new class is more difficult than to retain an existing one.'

The Earl of Dunraven accompanied his statesmanlike proposals for extending to the English Peers the principle of representation in the House of Lords, by a suggestion that the nominees of *county councils* should be associated with the representative peers. 'He proposed to associate the democracy with the aristocracy in legislation, by granting seats in the House to persons accepted by the Crown (!) on the recommendation of the new county councils to be created under the Local Government Bill,' which had not then passed! 'What he proposed was that the county councils should be treated as "electoral colleges" for the purposes of this bill, each being invited to send up a representative (who need not necessarily be a member of the council) to the House of Lords.'[1]

The Marquess of Salisbury said[2]:—'I think my noble friend can hardly be serious in suggesting it. Before they are even called into existence you are going to give to this unborn life the tremendous power of electing something like three-fifths of the Second Chamber of the legislature. My Lords, it is difficult to understand the genesis of such an idea in any man's brain. . . . Do not for a moment be misled by the idea that, because there have been many reforms of the House of Commons, therefore a reform of this kind is necessary for the House of Lords. *All the reforms of the House of Commons have been within the confines of its original constitution*, with the view of giving a more complete and literal meaning to the original theory upon which it is founded. But here you are proposing to make an entire change, and to abandon altogether the lines upon which this House was originally framed. You are abandoning the firm rock of experience, and taking a plunge into the unknown.'

The Earl of Rosebery himself seems to have some hazy idea of peers elected by county councils, by the larger

[1] Hansard's *Parl. Debates*, third series, vol. cccxxv. 530–1.
[2] *Ibid.* 558, 559, 560.

municipalities, or even by the House of Commons, or by all three.[1]

'The composition of the House sounds too much like one of the receipts in Mr. Lear's "Nonsense Cookery." The receipt for Gosky patties, if we remember rightly, ends, "stir well together, dish up on a clean white cloth, and throw the whole out of the window."'[2]

'To make a seat in the House of Lords,' says Mr. Macpherson,[3] 'in any way resultant from election by a county council could not fail to prove prejudicial to the senatorial character of the Second Chamber of the imperial parliament.'

'Election by county councils' and 'the larger municipalities' 'is liable,' says Mr. Spalding,[4] 'to the objection, which is fatal to all elective systems, that it would result in too uniform a type of representative.' On the other hand, Mr. Spalding[5] is willing to fortify his scheme of substituting life peers for hereditary ones by proposing for 'official peers,' 'the chairman of the six largest county councils,' and 'the mayors of some of the larger municipalities.' All Mr. Spalding's suggestions of 'reforms in the constitution of the House of Lords' are based upon the idea that it must be 'brought *into harmony*' with modern requirements. Sir Thomas Erskine May (Lord Farnborough), a much higher authority than Mr. Spalding, is of opinion that it has been 'brought into harmony' (he uses the very phrase) with modern requirements!

'The House of Lords,' he says,[6] 'continues to hold its high place in the State next to the Crown, and still enjoys the greater part of its ancient privileges. Yet no institution has undergone greater changes. But the changes which it has undergone have served to bring this great institution *into harmony* with other parts of the Constitution, and with the social condition of the people, upon which time has worked equal mutations.

'In each successive age it has assumed a more popular

[1] Hansard's *Parl. Debates*, third series, vol. ccexxiii. 1570.
[2] The *Spectator*, September 29, 1894.
[3] *The Baronage and the Senate*, p. 336.
[4] *The House of Lords*, chap. xix. p. 242. [5] *Ibid.* p. 249.
[6] *Constitutional History of England*, vol. i. chap. v. pp. 228, 229, 237, 252, 253, 254.

and representative character. Men who have attained the first eminence in war and in diplomacy, at the bar and in the Senate, men wisest in council and most eloquent in debate, have taken their place in its distinguished roll, and their historic names represent the glories of the age from which they sprung. Men who have amassed fortunes in commerce, or whose ancestors have enriched themselves by their own industry, have also been admitted to the privileged circle of the peerage. Men of the highest intellects, achievements, and wealth the peerage has adopted and appropriated to itself; men of secondary pretensions it has still left to the people.

'At the same time the principle of representation has been largely introduced into the constitution of the House of Lords.

'The various changes in the constitution of the House have considerably affected the political position and influence of that assembly. . . . It is scarcely to be questioned that the House of Lords has gained importance as a political institution by its enlargement. Let us suppose, for a moment, that the jealousy of the Peers had led either to such a legal restraint upon the prerogative as that proposed in the reign of George I., or to so sparing an exercise of it, that the peerage had remained without material increase since the accession of the House of Hanover. Is it conceivable that an order so limited in number and so exclusive in character could have maintained its due authority in the legislature? . . . But the wider and more liberal constitution which it has acquired from increased numbers and a more representative character has saved the House of Lords from these political dangers.' It is 'accessible to the same sympathies and influences as the other House.'

The expansive growth of the House of Lords is a cause of sorrow to Mr. Spalding.

'The history of the House of Lords,' he says,[1] 'shows that there has been a persistent numerical increase in the membership of that House until it has become the most unwieldy Upper Chamber in the civilised world; and thus the sole constitutional check upon its action, the creation of new members, has become incapable of application.' As Lord

[1] *The House of Lords*, chap. xviii. p. 219.

Rosebery said in 1888,[1] 'hardly a squadron or a regiment of peers would redress the balance in certain contingencies.' '*Hinc illæ lacrymæ*!' Mr. Spalding's very first precaution, therefore, is to limit the number of his new House of Lords to 'a maximum of not more than 300.'[2]

The only time in the history of England that this 'sole constitutional check' was exercised was, as we have seen, in the reign of Queen Anne.

'It is not uninteresting to see what were the views of Lord Brougham, the most liberal of statesmen, on 'the sole constitutional check':—

'When I went to Windsor with Lord Grey, I had a list of eighty creations, framed upon the principle of making the least possible permanent addition to our House and to the aristocracy, by calling up peers' eldest sons; by choosing men without any families; by taking Scotch and Irish peers. I had a strong feeling of the necessity of the case, in the very peculiar circumstances we were placed in; but such was my deep sense of the dreadful consequences of the act, that I much question whether I should not have preferred running the risk of confusion that' [would have] 'attended the loss of the bill, as it then stood, rather than *expose the Constitution to so imminent a hazard of subversion.*'[3]

'Lord Brougham,' said Lord Salisbury,[4] 'has expressed his great doubt whether, if matters had come to an issue, that course' (i.e. the creation of eighty new hereditary peers) 'would ultimately have been taken. It is a measure from which ministers have obviously flinched; and I am dwelling on the point for the purpose of reminding your Lordships that they have flinched from it, and that the threat of it has been very rare. Lord Brougham stated that if it had been a question of the creation, not of hereditary peers, but of life peers, very much less difficulty would have existed.'

Mr. Spalding's great object is 'the gradual elimination of

[1] Hansard's *Parl. Debates*, third series, vol. cccxxiii. 1552.
[2] P. 230, *The Proposed Reform*.
[3] Lord Brougham's *Political Philosophy*, vol. iii. chap. xxix. p. 308.
[4] Hansard's *Parl. Debates*, third series, vol. cccxxvii. 390.

the hereditary element in the House of Lords,'[1] with a view to 'the ultimate extinction of the hereditary element';[2] but he is most inconsistent. As an argument in favour of life peers he states, quite correctly, that 'until the time of the reformation, the large majority of the House were life members,'[3] i.e. Lords Spiritual; and yet, in his reconstruction scheme, he proposes to still further reduce the small number of the Lords Spiritual left in the House of Lords!

Among the 'categories' for the selection of official life peers he enumerates 'the Church.' 'This interest is already represented by twenty-six life peers. It would be impossible, in a reformed House, to admit so many members (!). The "category" would have to consist of the archbishops and bishops, as heretofore, but the number of representatives actually sitting in the Upper Chamber would have to be greatly reduced!'[4]

The inconsistency is intensified by the omission of 'dissenters,' who form the first of Lord Rosebery's nine 'categories,' on the ground that 'the tendency of dissenting bodies is, more and more, to coalesce with the Church';[5] and we have seen that, according to Hallam,[6] the Lords Spiritual were 'the representatives,' not only of 'the Church,' but 'of religion itself.'

Perhaps the most amusing proposal of a 'category' for life peers, which Mr. Spalding thinks 'quite easy' of application, would be 'leaders of the labour movement.'[7] Fancy Mr. Keir Hardie, Mr. John Burns, and Mr. J. H. Wilson (one of the representatives of the Bermondsey vestry at the Trafalgar Square meeting against the House of Lords) created life peers! Such a suggestion exhibits 'a confusion of thought' which astonishes me. Lord Rosebery, on the other hand, in 1884, said[8]:—

'There is another class which is absolutely not represented in this House, and I suppose it is absolutely necessary

[1] Chap. xix. p. 240.
[2] P. 243.
[3] Chap. xviii. p. 220; chap. xix. p. 238.
[4] Chap. xix. p. 248.
[5] Chap. xix. p. 252.
[6] *Middle Ages*, vol. iii. chap. viii. part iii. pp. 4, 5.
[7] Chap. xix. p. 250.
[8] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 947.

that it should be unrepresented. That is, the labouring class. I dare say it is absolutely impossible that the labouring class should be represented in this House.'

The leaders of the labour movement are, essentially, representatives of the democracy, and, therefore, their proper place is not in the House of Lords, but in the democratic assembly—the House of Commons—where I would gladly see their number increased.

No wonder Mr. Spalding admits that 'it is difficult to obtain a serious hearing for such a proposal' as his.

A similar objection may be urged against Mr. Spalding's proposal to make 'the tenant' into a life peer.[1] This would involve placing the leaders of the Parnellites and Anti-Parnellites in the House of Lords. Their place clearly is in the democratic chamber, the House of Commons, where they now sit.

Two of Lord Rosebery's 'categories' were 'literary men and artists,' who certainly would be more suitable for life peerages than 'the leaders of the labour movement'; but Mr. Spalding thinks that the proposal to accord representation to literature and art seems to be based upon 'confusion of thought.'[2]

But it really does not matter how Mr. Spalding's House of Lords is constituted. He proposes 'to promote the smooth working of the legislative machine' by making his Upper Chamber practically, in the long run, a cipher. He hampers and worries it at every turn. The 'quorum for general debate, for initiating legislation and for revision should be raised to 100.'[3] It may be admitted, for the sake of argument, that the present quorum of the House of Lords—three—is too small; but the suggestion that it should be 100 (especially in view of the suggestion[4] that Mr. Spalding's entire House of Lords should consist of only 300 members), is monstrous. It is also grossly unfair. The quorum of the

[1] Chap. cxix. p. 250. [2] *Ibid.* p. 252.

[3] Chap. xviii. pp. 230, 231. The proposal is repeated by Mr. Spalding in *The House of Lords; an Anomaly and a Danger*, p. 38.

[4] *The House of Lords; a Retrospect and a Forecast*, chap. xviii. p. 230.

House of Commons is forty, and I have been present in my place in the House of Commons, at the fag-end of a session, when, with a bare quorum, that House has voted away millions sterling of the people's money in committee of supply.

Again: 'for the special purpose of rejecting a bill sent up from the House of Commons, the quorum should be raised to 150, and the rejection, to be carried, should be supported by a majority of two-thirds of those present and voting.'[1] These suggestions are also unfair. No such conditions are imposed on the House of Commons. Its quorum of forty is sufficient for all purposes, and the most important measure may be carried by a majority of one, or even by the casting vote of the Speaker, when there is a tie. It will be seen that Mr. Spalding will not allow his House of Lords to reject a bill, unless one-half of its members are present. This might postpone the rejection of a measure to 'the Greek Kalends.' As far, however, as 'the Home Rule Bill' is concerned, Mr. Spalding's conditions were much more than satisfied—419 members out of 556 voting for its rejection.

'The Upper Chamber should be allowed to reject a bill for any given purpose twice, and not oftener; and only once, if the rejection is followed by a dissolution. If it were returned to them a third time, their powers should be confined to amendment. The Upper House, having accepted the principle of a bill, and amended it, should not be competent to reject it afterwards on the ground that the Commons had disagreed with their amendments. On questions of detail, the will of the Commons should prevail.'[2]

I do not think that any body of English gentlemen, not even Mr. Spalding's 'categorical peers,' would, with previous notice of the treatment they were to receive, enter an 'Upper House' which was to be kicked and cuffed in this way.

Mr. Shaw Lefevre really must think that Englishmen are children. At Bradford, on June 16, 1894, addressing his

[1] *The House of Lords; a Retrospect and a Forecast*, chap. xviii. p. 230. The proposal is repeated by Mr. Spalding in *The House of Lords; an Anomaly and a Danger*, p. 38.

[2] *Ibid.* chap. xviii. p. 231. The proposal is repeated in *The House of Lords; an Anomaly and a Danger*, p. 38.

constituents, he said[1]:—'I am not in favour of either ending or mending the House of Lords. I do not think that public opinion at the present time is in favour of a single Chamber. My belief is that the wisest course at the moment is to reduce still further the powers of the Lords by depriving them of the power of veto.'

In what part of the world will Mr. Shaw Lefevre find such a monstrosity as a Second Chamber without any 'power of veto'? The very object of having a Second Chamber is to enable it to check the progress of objectionable measures.

The most recent contribution to these schemes for gerrymandering the Constitution has been furnished by the 'conference' held at Leeds on June 20, 1894, under the auspices of 'the National Liberal Federation.'

This luckless assembly has drawn upon itself a greater wealth of scorn and contempt than any that has tried to tinker the Constitution in the whole range of British history.

The phrase of the Thunderer of Printing House Square is really worthy to rank with some of Mr. Disraeli's memorable sayings:—'The incoherent splutterings of uninstructed fanaticism.' 'A more humiliating exhibition of blind passion, political incapacity, and intellectual feebleness, reaching almost to imbecility,' than that displayed by 'these frenzied sectaries,' 'it would be hard to imagine.'[2]

'Fussy feebleness'—'inflated babblers'—'ignoramuses'—'simpletons' are the epithets hurled at the agitators by the *Saturday Review*,[3] which has the following forcible remark:—'To pack a House of Lords with new peers, in order to pass a particular measure, would, no doubt, have been a dangerous straining of the prerogative of the Crown; but it is not in the same hemisphere of thought with the same act done for the purpose of subverting the Constitution.'

'The contumely they heaped upon the Peers was grossly farcical.'[4] 'Does any sane man, whatever his views may be as to the recent relations between the two Houses of Parliament, believe that there is a ghost of a chance of carrying a

[1] *Times*, June 18, 1894.
[2] *Ibid.*, June 21, 1894.
[3] Of June 23, 1894.
[4] The *Standard*, June 21, 1894.

general election on this proposal to make a majority for the time being of the Commons absolute masters of the statute-book?'[1]

'Unionists have little reason to wish ill to a departure which will seal the fate of Home Rule.'[2]

'The National Liberal Federation discharged its thunders yesterday, and the report is merely the fizzing of a damp squib.'[3] The members of the conference are 'the legitimate successors of the famous statesmen of Tooley Street.'[4]

'The conference at Leeds, organised by the National Liberal Federation for the express purpose of passing resolutions condemnatory of the House of Lords, met yesterday, and passed the resolutions accordingly. Nobody is a penny the wiser or a penny the worse.'[5]

The *Pall Mall Gazette*[6] has a most amusing travesty of the whole affair. This is its vivid picture of the chairman's efforts:—

'The result of Dr. Spence Watson's constant and unnecessary exertions is, that he pumps up a jerky flow of thin commonplaces, delivered in a pained and piping voice!' If this was 'the result' in the case of the chairman, what must have been 'the result' in the case of the other 'prospective freeholders of Abraham's bosom,' who denounced 'hereditary bishops'?

The 'special representative' of the leading sensational Radical journal has done his level best to make the 'conference' ridiculous.[7] 'The hall was "packed"' (which is literally true) 'with plainly-dressed men, clean and strong in the grain, mostly of the smaller middle-class type.'

'A young delegate (on a form) pronounced in favour of "the total ABLUTION of the House of Lords!"' Another delegate delivered 'a bitter and fetching but rather "gassy" speech.' 'The speech-making was not epoch-making.'

The 'conference' seems to have got its phraseology from

[1] The *Standard*, June 21, 1894.
[2] *Ibid.*
[3] The *Morning Post*, June 21, 1894.
[4] *Ibid.*
[5] The *Morning*, June 21, 1894.
[6] For June 21, 1894.
[7] The *Daily Chronicle*, June 21, 1894.

Mr. Spalding, as it talks in its first resolution of 'the power now exercised by the House of Lords to mutilate and reject legislative measures passed by the House of Commons.' One of the speakers rang the changes on 'anomaly' and 'danger.'

The only sensible thing the 'conference' did was to reject, by an overwhelming majority, the resolution, not of the Long Parliament, but of the meagre Rump, as I have shown, of the Long Parliament, when moved by Mr. Labouchere and seconded by Sir Wilfrid Lawson. As the latter worthy complained, 'If anything could distress him, it was what he had seen at Leeds—want of backbone.' [1]

The resolution which the 'conference' carried was as follows:—'That this meeting calls upon the Government to introduce, as soon as practicable during the present parliament, a measure for the abolition of the House of Lords' veto, by providing that, whenever a bill passed by the House of Commons shall be altered or rejected in the House of Lords, such bill may be reaffirmed by the House of Commons in the same session or the same parliament, with or without such alteration, and, subject only to the royal assent, shall thereupon become law.'

The bill, to be sure, had no chance of 'becoming law,' but great advantage would accrue by having their plan, clearly and specifically stated in a bill, 'solemnly endorsed by a Liberal government.'

'The right of the House of Lords,' says the *Observer* with regard to the resolution, 'to appeal from the House of Commons to the country in respect of any bill on which public opinion is divided, is to be exchanged for *the right of appealing from the House of Commons to the self-same body*!' The latter-day 'Hampdens,' 'inglorious,' though not 'mute,' had not even the courage of their own opinions. When it came to actually 'ending' the House of Lords, their resolution seems to have oozed away.

'In the eyes of ninety sane people out of a hundred it seems mere midsummer madness to suppose that this vast Empire can be governed by a single popularly elected assembly with-

[1] The *Daily Chronicle*, June 21, 1894. This was said at a subsequent meeting, on the same day at Burnley.

out check or control of any kind on its own absolute freedom of action.'

'A Chamber constituted on the basis of hereditary rank has, by one of the many accidents of our nation's history, given us as good a Second Chamber as can be found in this imperfect world of ours.' [1]

'The so-called "conference" at Leeds was not a conference at all,[2] it was a mere prearranged demonstration in favour of a particular decree. A "conference" which shows no trace of the feeling that some kind of effective check on popular impatience is desirable at all, is a sheer mockery of the meaning of the word "conference," a mockery which places an English Radical's rashness in the most striking and violent contrast to the procedure of our own nearest kinsmen, when they dealt with the same serious question at the epoch of the great American revolution.' [3]

Mr. John Morley, at Rotherham, said, in reference to the decisions of the Leeds 'conference' [4]:—'I must not be understood to pledge myself, or anybody else, to the precise plan proposed at Leeds. There are some objections to it. It may be argued that *a bill passed by cancelling the veto of the House of Lords might be repealed*, as destitute of moral authority, *by the next* Tory *parliament*.'

The Earl of Rosebery, at Bradford, was more emphatic than Mr. Morley. He positively declined to accept the 'mandate' of this 'one conference'! He refused to 'introduce, as soon as practicable during the present parliament, a measure for the abolition of the House of Lords' veto.' And he gave very good reasons for his refusal.[5] 'Within the limits of the Constitution you can only deal with the House of Lords—with the powers of the House of Lords—by a bill passed through both Houses. Anything but that is, constitutionally speaking, a revolution—is over-riding a [6] chamber of parliament against

[1] The *Observer*, June 24, 1894.
[2] The *Spectator*, June 23, 1894.
[3] *Ibid.*
[4] *Daily News*, June 28, 1894.
[5] See the *Daily News*, October 29, 1894.
[6] The *Daily News* says '*the* chamber of parliament,' but this is absurd. I have taken the indefinite article from the *Times*' report, which I have collated.

its own will, without legislation passed by its own consent. Unfortunately, as a practical [1] plan, the abolition of the veto by a bill is subject to the same difficulties as a bill for the abolition [of the House of Lords]. You cannot get the House of Lords to pass a bill for the abolition of their veto, because they would say they were not a House of Lords at all without it.' [2]

And what is the Earl of Rosebery's plan? First, 'a resolution of the House of Commons.' Then, a 'referendum.' For the resolution he cited 'the resolution of 1678, which asserts the free and uncontrollable right of the House of Commons to represent the people in matters of finance.'

The resolution of July 3, 1678, was as follows:

'All aids and supplies to His Majesty in parliament are the sole gift of the Commons, and all bills for the granting of any such aids or supplies ought to begin with the Commons; and it is the undoubted and sole right of the Commons to direct, limit, and appoint in such bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which *ought not* to be changed or altered by the House of Lords.' [3]

This resolution (so-called) was passed at a time when the Commons were in a state of justifiable irritation with King Charles II., and had actually refused, just before, to grant him additional supplies.[4]

It was more in the nature of *a protest* than a resolution. Its sting was in its tail, the concluding words, 'Which ought not to be changed or altered by the House of Lords.' It does not say 'which *cannot* be changed or altered by the House of Lords'; and the House of Lords have never surrendered their claim to *amend* money bills, which, shortly before the passing of the Commons' resolution, they had asserted to be 'our undoubted right.' [5]

[1] The *Daily News* says 'a direct plan,' which is nonsense. I have taken the word 'practical' from the *Times*' report.

[2] The *Daily News* says 'because they would say there was no use then in being a House of Lords at all.' I have again taken the corrections from the *Times*' report.

[3] *Parl. History*, vol. iv. 1005. [4] *Ibid.* 1000.

[5] *Journals of the House of Lords*, April 16, 1677, xxx. 119. Cited Pike's *Constitutional History of the House of Lords*, chap. xiv. p. 345, note (2).

The bill which led up to this resolution was one 'for granting a supply to His Majesty to enable him to disband the forces raised since September 29.'[1] The king wanted to continue the army longer on foot, contrary to the wishes of the Commons; and the Lords amended the bill by extending the time for disbanding the army from June 30 to July 27 for the part of the army in England, and from July 24 to August 24 for those abroad.

The Commons disagreed with the Lords' amendments, and gave 'reasons' at a conference, but 'offered a proviso by way of expedient.'

The Lords, at a second conference, gave several reasons for insisting on their amendments, and for rejecting the Commons' proviso.

The Commons accepted one of the Lords' amendments to this Money Bill, and disagreed with the other two, and adhered to the proviso.

The Lords insisted on the other amendments, and disagreed to the proviso.

The Commons again disagreed with the other amendments, and adhered to the proviso, and desired another free conference. 'The next day it was ordered that the members who managed the conference, or any three of them, should prepare and draw up a statement of the rights of the Commons in granting of money.'

On the following day the resolution cited by the Earl of Rosebery was passed. But the Commons during this animated controversy had conceded the very point at issue by accepting one of the Lords' amendments. They now protested that 'the ends, purposes, considerations, conditions, limitations, and qualifications of such grants ought not to be changed or altered by the House of Lords.' But the House of Lords *had* changed them, and the House of Commons had *assented* to the change.[2]

[1] *History of the Proceedings of the House of Commons from the Restoration to the Present Time* (1742); vol. i. 30 Car. II. p. 288.

[2] See as to these events *Parl. Hist.* vol. iv. 1004, 1005; and *The History of the Proceedings of the House of Commons*, vol. i. 30 Car. II. pp. 288–092.

'The powers of the House of Lords over the finances,' says Lord Rosebery, 'were restricted once, twice, and thrice by resolutions of the House of Commons.'

I would refer anyone who thinks there is anything in this argument, to the speech of the great Earl of Derby on 'The Customs and Inland Revenue Bill' of 1861, already cited.[1]

'A resolution of the House of Commons, EXCEPT SO FAR AS THEY THEMSELVES CAN ACT UPON IT, is a piece of waste paper.'

If the House of Lords sends down amendments to a bill which infringe the privileges of the House of Commons in relation to finance, the House of Commons has only to 'lay them aside,' and there is an end of them; but the House of Commons cannot 'lay aside' the veto of the House of Lords![2]

Lord Rosebery says:—'As regards the powers of the House of Lords to interfere in elections for the House of Commons, these have been equally restricted by resolutions of the House of Commons.'

Lord Rosebery had better study the language of a great liberal chancellor, Lord Brougham:—

'I do not hold it to be contrary to law for any peer to interfere in elections in the same manner in which a commoner can legally interfere. I speak as a lawyer and constitutionally. I am aware that such interference on the part of peers is contrary to a resolution of the House of Commons, but your lordships have never admitted that you were concluded by a resolution of the other House of Parliament.'[3]

Lord Rosebery is usually felicitous in his similes, but he made a most unfortunate slip, when he compared his House of Commons' resolution, permanently inscribed in the Journals of the House of Commons, to the blood of the murdered Duncan indelibly staining Lady Macbeth's hand.[4] I quite admit the parallel. Lord Rosebery, against his better judgment, has

[1] See Chap. XX. *supra*.

[2] Not even in the case of a Finance Bill, which the House of Lords has unquestioned power entirely to reject.

[3] Hansard's *Parl. Debates*, third series, vol. xxv. 1231. He was then lord chancellor.

[4] Not all the perfumes of Araby itself will wash that resolution out of the books of the House. *Daily News*, October 29, 1894.

made himself, for party purposes, an 'accessory before the fact' to the destruction of the Constitution, as Lady Macbeth was an accessory before the fact to the murder of the king. He will one day, like her, cry out in bitterness of spirit, 'Out, damned spot! Out, I say!' but the blot upon his escutcheon will remain.

Let us now pass from the resolution to the so-called referendum. 'The foreign referendum,' said the Marquess of Salisbury at Edinburgh,[1] 'is a clear and distinct reference of a particular measure to the judgment of the electors. Clearness and distinctness are of the essence of the institution. Clearness and distinctness are the two elements which are absolutely absent from the statement of the Prime Minister.

'A referendum sending a measure in its details to the people to be voted on, whether you approve of it or not, is, at all events, an honest proceeding whose effect no one can mistake.' 'But Lord Rosebery's reference of this question of the House of Lords,' mixed up with every conceivable ambiguity, concealed between every doubtful play of words, that is not a referendum.' 'He has no more power than I have, or than you have, of determining what shall be the subject of reference to the electors. They will vote for the matter that peculiarly concerns them.'

Dr. A. K. Wallace contributes to the *Contemporary Review*[2] a paper facetiously termed 'How to "preserve" the House of Lords,' which proves to be a synonym for 'How to "make a pickle" of the House of Lords.'

1. The two constituent elements of the existing House of Lords, the spiritual peers[3] (who are the first estate of the realm) and the hereditary peers (who are the second estate of the realm) are to disappear, at all events, from the House of Lords, and yet (strange as it may seem) 'the historical continuity of that House is to be "preserved"!'

2. No new hereditary peers are to be created, but the existing hereditary peers are, with knights and baronets, to be eligible for the new House of Lords, if not under 40

[1] On Tuesday, October 30, 1894. See the *Times* of October 31, 1894.
[2] No. 337, January 1894, p. 114. [3] See 25 Ed. III. cap. 6.

years of age. All existing peers, knights, and baronets under 40 years of age, and everybody else apparently, however 'distinguished' and 'meritorious,' are to be ineligible.

3. The new House of Lords must be 'elected by the people.'

4. To carry out this sacred principle each county, whatever its size,[1] is to be the electoral unit, and to have a similar number of representative peers, i.e. two, who are to be elected by voting papers, the members (*en bloc*) of the county, district, town, and parish councils within it being the electorate.

5. The representative peers so elected are 'thereupon to be created life barons,' although the 'term for which' they are 'elected' may not be for life, which is 'a matter of minor importance.'

N.B. The present House of Lords is 'to give to the world a too rare example' by 'voluntarily resigning its privileges' and 'initiating' 'this great reform.'

These fantastic suggestions aim a deadly blow at the prerogative of the Queen, as the fountain of honour. The royal prerogative of creating peers is not to be exercised until the county councils, district councils, town councils, and parish councils have *dictated* to Her Majesty whom she is to select for that purpose, and then she can only create their *nominees* life peers, and must abandon altogether her prerogative of creating hereditary peers! Dr. Wallace cannot 'eat his cake and have it.' He cannot indulge in the luxury of a Second Chamber composed on a principle similar to that on which the late Metropolitan Board of Works was founded, and at the same time 'preserve the House of Lords.' The very object of a Second Chamber is to revise the work of a first, and not simply to say 'ditto' with regard to all its eccentricities. A Second Chamber, 'in general and permanent harmony with the House of Commons,' would be useless.

Dr. Wallace's inconsistencies are of the grossest character. He wants 'life peers,' and, at the same time, he would expel the Lords Spiritual from the House of Lords—life peers chosen by the prime minister of the day, who reflects

[1] Except Yorkshire, the three Ridings of which are to be treated as three counties.

the will of the people! Dr. Wallace wants 'representative peers,' and yet he objects to the 'present representative peers of Scotland and Ireland' as being 'quite inadmissible.' The new House of Lords 'must be elected by the people'; and yet he so entirely ignores population as to place Huntingdonshire on a footing of equality with Lancashire! He thus reproduces the 'anomaly' which that admirer of the Constitution of the United States of America, Alexis de Tocqueville, points out [1] as the one blot upon it:—'The principle of the independence of the States prevailed in the formation of the Senate, and that of the sovereignty of the nation predominated in the composition of the House of Representatives. It was decided that each State should send two senators to Congress, and a number of representatives proportioned to population.' This sounds very grand, but what is the result? Let de Tocqueville reply:—

'It results from this arrangement that the State of New York has at this present day forty representatives and only two senators; the State of Delaware has two senators, and only one representative; the State of Delaware is therefore equal to the State of New York in the Senate, whilst the latter has forty times the influence of the former in the House of Representatives. Thus, if the minority of the nation preponderates in the Senate, it may paralyse the decisions of the majority represented in the other House.' This, Alexis de Tocqueville thinks, is 'contrary to the spirit of constitutional government.' And yet this 'blot' on the Constitution of Brother Jonathan Dr. Wallace proposes deliberately to pick out and import into this country, with the label 'Made in the United States of America,' to ensure its passing muster with the democracy!

When Germany decided to base her Upper House on the principle of State representation, she took particular care to guard against the 'anomaly' of placing small States on a footing of equality in that House with big States. Germany has, like the rest of Europe, except Greece, two Houses, the

[1] De Tocqueville on *Democracy in America*, translated by Reeve, 3rd ed. vol. i. p. 131.

Bundesrath, or Federal Council, and the Reichstag, or Diet of the Realm. The individual States of Germany, twenty-six in number, are represented in the Federal Council. These States include four kingdoms, six grand duchies, five duchies, seven principalities, the three free towns, and the province of Alsace-Lorraine. The fifty-eight members of the Bundesrath are appointed by the governments of the different States for each session. The 397 members of the Reichstag are elected by universal suffrage. But Germany has not given two representatives in the Federal Council to each State, irrespective of its size and importance. Prussia, for example, sends seventeen representatives to the Upper House, while Saxe-Coburg-Gotha sends only one.[1]

CHAPTER XXIX

I. THE REFORM OF THE HOUSE OF LORDS

WHEN the Earl of Rosebery moved for the appointment of a select committee of the House of Lords 'to inquire into its own general condition in 1884,'[2] he said:—

'My modest proposition is little more than a request for a new coat of paint.'

Voting by Proxy abandoned

The privilege of appointing proxies to vote for them in parliament was originally a special favour conferred on Lords Spiritual and Temporal by the Crown at a time when a summons to parliament was regarded by them as a burthen rather than a benefit.[3]

The Journals of the House of Lords begin with the reign of Henry VIII. The list of the Lords heads the entry for the day, and from 1514 the attendances are registered. The prominence given to the names of the lords is due to the fact

[1] See on this subject Dickinson's *Foreign Parliaments* (1890), chap. i. pp. 56–58.

[2] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 937, 940.

[3] See chap. xii. of Pike's *Constitutional History of the House of Lords*, pp. 235–245, and chap. iii. *supra*.

that attendance on the business of the House was *compulsory*, fines being leviable on absentees without leave, and proxies being required from those who could not attend. The registration of these proxies was one of the earliest pieces of business in each parliament, and it was the custom for absent lords to name several proxies, evidently in order to save the risks of non-attendance.[1]

During the sixteenth and seventeenth centuries the privilege of voting by proxy, which was, originally, by special permission of the king, became absolute, though subject to such limitations as the House itself might impose.[2]

Mr. Justice Blackstone, citing 'Sir Edward Coke,'[3] says:—'Another privilege is that every peer may make any other lord of parliament his proxy to vote for him in his absence—a privilege which a member of the other House can by no means have, as he is himself but a proxy for a multitude of other people.'[4]

The privilege does not apply to the committees of the whole House.[5]

On February 16, 1836, Mr. Thomas Attwood presented a petition for the reform of the House of Lords, signed by 20,000 persons in Birmingham, and the hon. member explained that the abolition of voting by proxy was one of the reforms contemplated.[6]

It was urged, on the other hand, that no men could be better qualified to understand the great political questions of the day than members of the House of Peers employed in the diplomatic service abroad; they could not, however, quit their posts and return home to vote on these questions. It was only by means of the proxy system that their votes could be recorded.

The objections to the practice of voting by proxy were felt

[1] *Protests of the House of Lords*, by Professor Thorold Rogers, preface, p. v., and see 5 Ric. II. stat. 2, cap. 4.

[2] Hallam's *Constitutional History of England*, vol. iii. chap. xii. p. 35.

[3] 4 Inst. 12.

[4] Blackstone's *Commentaries on the Laws of England*, book i. chap. ii. p. 168.

[5] *Annual Register* for 1832, p. 147.

[6] Hansard's *Parl. Debates*, third series, vol. xxxi. 439, 440.

to be so strong that a select committee of the peers recommended that the practice should be discontinued.

The House of Lords accordingly, in 1868, passed a standing order, 'that the practice of calling for proxies on a division be discontinued, and that two days' notice be given of any motion for the suspension of the order.'

It is not likely that any attempt will be made to suspend the order and renew the practice.[1]

The House of Lords were thus, in deference to the wishes of reformers, content to forego, by a self-denying ordinance, what Hallam terms 'an absolute privilege' accorded to them by the Constitution—a privilege which, needless to say, was most convenient from a peer's point of view.

Raising the Quorum

The Earl of Rosebery called attention in 1884[2] to a much-needed reform, and that is in the quorum of the House of Lords.

Lord Rosebery related some amusing anecdotes. Lord Lyndhurst, when Lord Chancellor, was addressed, while sitting on the woolsack, by a noble and learned lord on a topic of no great public interest at considerable length. Lord Lyndhurst looked at his watch and found that it was near eight o'clock, the hour at which he had an engagement to attend a dinner. As the noble and learned lord showed no symptoms of stopping, Lord Lyndhurst exclaimed: 'By jove, I'll count you out!' Two were not a quorum.

The quorum of the House of Commons is forty; the quorum of the House of Lords is three! For *judicial* purposes the quorum of three should be retained.

With regard to ordinary *legislative* business, the House of Lords has itself recently passed a much-needed standing order to the effect that if, on a division, it is found that thirty lords are not present, the business in hand shall be *ipso facto* adjourned—a useful substitute for 'counting out.'[3]

[1] See *A History of Our Own Times*, by Justin McCarthy, M.P., pp. 218, 219, and May's *Parliamentary Practice*, 10th ed. chap. xiii. pp. 350, 351.

[2] Hansard's *Parl. Debates*, third series, vol. cclxxxix. 942–3.

[3] May's *Parliamentary Practice*, 10th ed. chap. viii. p. 205.

Raising the Age

In early times there seems to have been no strict rule with regard to age. Even peers who were minors were occasionally summoned to parliament, if of the blood royal. But on May 22, 1685, the House of Lords resolved 'that no lord under the age of one-and-twenty years shall sit in this House'; and the resolution was to be added to the standing orders.[1]

It might be contended that as a Spiritual Lord cannot possibly take his seat before he is thirty, while neither bishop nor lawyer ever does take it till far later, a higher limit of age would be an advantage for Lords Temporal by inheritance, especially as it would give them additional opportunity and inducement to win their spurs in the House of Commons.[2]

It is a remarkable fact that in the Lower Houses of the Continent of Europe the minimum age ranges from twenty-four to thirty years,[3] while the minimum age of Belgian,[4] French,[5] and Italian senators[6] is forty.

Bankruptcy Disqualification

By the 'Bankruptcy Disqualification Act, 1871,'[7] the following useful provisions became law:—

Whereas it is necessary for the preservation of the dignity and independence of Parliament that bankrupts should be disqualified from sitting or voting in the House of Lords:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This act may be cited as 'The Bankruptcy Disqualification Act, 1871.'

2. Every peer who becomes a bankrupt shall be disqualified from sitting or voting in the House of Lords, or in any committee

[1] *Lords' Journals*, May 25, 1685. (Vol. xiv. p. 10); Pike's *Constitutional History of the House of Lords*, chap. xii. p. 275.
[2] The *Saturday Review*, September 29, 1894.
[3] See the *Almanach de Gotha* for 1894, *passim*.
[4] *Ibid.* p. 733.
[5] *Ibid.* pp. 833, 834.
[6] *Ibid.* pp. 999, 1000.
[7] 34 & 35 Vict. cap. 50.

thereof, and further, if a peer of Scotland or Ireland, shall be disqualified from being elected to sit and vote in the House of Lords.

3. A peer shall be deemed to have become bankrupt in manner and from and after the date hereinafter mentioned, that is to say,

As to England,—

When an order has been made under any act of parliament adjudging him a bankrupt, from and after the date of such order; or,

When a special resolution has been passed in pursuance of the Bankruptcy Act, 1869, declaring that his affairs are to be *liquidated by arrangement*, from and after the date of the registration of such resolution.

As to Scotland,—

When on any petition for sequestration a delivrance has been pronounced awarding sequestration of his estate, from and after the date of such delivrance.

As to Ireland,—

When on any petition of bankruptcy he has been adjudged by the Court of Bankruptcy and Insolvency in Ireland to be a bankrupt, from and after the date of the adjudication; or when he has filed a petition for an arrangement with his creditors under the superintendence of the said court, from and after the date of filing such petition.

4. A peer who has become a bankrupt, in the event of his bankruptcy being determined as hereinafter mentioned, shall from and after the date of such determination, if otherwise entitled, be qualified to sit and vote in the House of Lords, or in any committee thereof, and if a peer of Scotland or Ireland to be elected to sit and vote in the House of Lords, and when so elected to sit and vote in that House.

For the purposes of this act, a bankruptcy shall be deemed to be determined,

As to England or Ireland,—

Where an order has been made adjudging a peer to be a bankrupt, if such order is annulled on the ground that the person against whom the order is made ought never to have been adjudged a bankrupt.

As to Scotland,—

Where a delivrance has been pronounced awarding sequestration of a peer's estate, if the sequestration is recalled on the ground that his estate ought never to have been sequestrated.

Also as to the United Kingdom,—

Where such bankrupt has been duly discharged, either by actual payment or satisfaction, or in the mode prescribed by the respective statutes in force in that behalf, from all debts and liabilities due at his bankruptcy from which he can be so discharged; and when he shall further satisfy the House that he is also discharged from the debts and liabilities (if any) to which he was liable at the date of his bankruptcy, and which are specially excepted from the operation of his discharge under the said statutes.

5. The seat of a representative peer for Scotland or Ireland shall, unless his bankruptcy be determined within one year after the date of his becoming a bankrupt, be vacated at the expiration of the year, and a new election be held to fill the vacancy.

6. If any person disqualified by this act from sitting and voting in the House of Lords sits or votes, or attempts to sit or vote, in that House, or in any committee thereof, he shall be *guilty of a breach of privilege*, and be *dealt with as the House of Lords may direct*.

7. Where a peer becomes bankrupt within the meaning of this act, the court having jurisdiction in respect of such bankruptcy shall cause the fact of such peer having become bankrupt to be certified to the Speaker of the House of Lords and the Clerk of the Crown in Chancery, and the Speaker shall, as soon as conveniently may be, inform the House of such certificate, and a record of such certificate shall be entered in the Journals of the House.

8. *A writ of summons shall not be issued to any peer for the time being disqualified from sitting or voting in the House of Lords.*

9. This act shall apply—

To any person who before or after the passing of this act becomes bankrupt, and subsequently succeeds to a peerage, whose bankruptcy has not determined at the time of his so succeeding, in the same manner as if he had been a peer at the date of his becoming bankrupt; also

To any person who has become bankrupt before the time of the passing of this act, and whose bankruptcy has not determined at such time, in the same manner as if his bankruptcy had occurred immediately after the passing of this act.

10. Nothing in this act contained—

(1) Shall, except as herein expressly provided, deprive any peer of any privileges to which he may be entitled in right of his peerage; or,

(2) Shall qualify any person to be elected to or sit or vote in

the House of Commons who would not have been so qualified if this act had not passed.

11. 'Peer' shall mean and include a peer of the United Kingdom or of any part of the United Kingdom, or any other Lord of Parliament.

Getting rid of Black Sheep

On March 19, 1888, the Earl of Rosebery cited the following passage from a speech of Sir Michael Hicks-Beach [1]:—

'Something surely it would not be impossible for the House of Lords itself to do, something to purify itself from the "black sheep" who can now disgrace it with impunity.'

The evil consists—not in their speaking and voting in the House of Lords, for this the 'black sheep' refrain from doing—but in the possibility of their doing so.

I have much pleasure in calling attention to a bill introduced by Lord Salisbury on June 18, 1888, for enabling the Queen, on an address presented by the House of Lords praying that the writ of summons to every peer named therein shall be cancelled, to direct by royal sign manual that it shall be cancelled accordingly.[2]

'Such cancelling,' said Lord Salisbury, 'will be good during the currency of the writ—that is, during the existing parliament; and unless Her Majesty shall issue a special order to the contrary, that writ shall remain permanently cancelled.' 'This bill will give the House a power which it does not now possess, that of *expelling a member*, a "black sheep."' 'Of course, both for the purpose of repairing errors and of dealing with offences which do not seem to call for so much severity, power must be reserved to the Queen, under constitutional advice, to re-issue at a later period of the session the writ of summons which has been cancelled. That is merely giving to this House a power which the other House possesses.'

The order of the day for the second reading of Lord Salisbury's bill had unfortunately to be discharged, *at the 'request' of Mr. Gladstone.*[3]

[1] Hansard's *Parl. Debates*, third series, vol. cccxxiii. 1553.
[2] *Ibid.* vol. cccxxvii. 395. [3] *Ibid.* vol. cccxxviii. 872, 910, 911, 912.

The Earl of Carnarvon expressed his regret that the state of business in the House of Commons rendered it impossible to pass it. 'The bill,' he said, 'which dealt with the power of expulsion from that House was one which was intended to remedy a distinct evil, and more than a distinct evil, a pressing evil. . . . He believed that this bill was one that was necessary, which was required by public opinion, and which could be perfectly justified upon its merits.'[1]

Next year (1889) the Earl of Carnarvon gave practical effect to these views by introducing a bill, with a precisely similar name, into the House of Lords:—

'I propose that whenever any peer shall be proved in any court of law to be guilty of felony or misdemeanour the court should make a record of the conviction and sentence, and should forward the same and a record of the evidence to the Lord Speaker. I propose, secondly, that whenever, in the opinion of a judge of a superior court, any peer should prove to be guilty of discreditable conduct which appears to the court to be inconsistent with his character as a member of the House, the court should report the fact, with a statement of the evidence, to the Lord Speaker, who should lay it before the House, and the House should address the Crown, and the Crown should then cancel the writ of summons. The peer, thereupon, would be unable to take part in the duties of the House until a new writ was issued in his favour. In either case it depends on the previous judicial action of some court. But I propose, further, to give your lordships an independent action in certain cases. There may be, no doubt, extreme cases, where the character and conduct of the person may be matter of notoriety, and may come under your lordships' cognizance, and, therefore, I have introduced words which cover that independent action.'[2] 'I believe we are the only great legislative assembly that is without the power' [of expulsion]. 'The House of Commons has the right, and has frequently exercised it.'[3]

[1] Hansard's *Parl. Debates*, third series, vol. cccxxviii. 871–2.
[2] *Ibid.* vol. cccxxxiv. 336, 339.
[3] *E.g.*, in the cases of Mr. de Cobain and Capt. Verney.

One of the Lords of Appeal in Ordinary, Lord Fitzgerald, supported the Earl of Carnarvon in a powerful speech:—

'My Lords, I am not aware that any provision exists in the constitution of this House under which any peer can be deprived of his rights as a peer—nor can he voluntarily renounce them. In the case of Lord Grey of Ruthyn it was held that "no peer can extinguish his honour; it descends to his descendants; even a surrender to the king is void."'[1]

'There undoubtedly exists, outside this House, a strong desire that power should be vested in the hands of the House, by which a delinquent peer may be deprived of his right to sit and vote.'[2]

The bill was lost, owing to the wideness of the net which it spread for tripping up members of the House of Lords. The Master of the Rolls, Lord Esher, to use Lord Salisbury's phrase, 'knocked the bill to pieces.'[3] 'Can anybody tell me,' he said, 'by what rule of law, or by what rule of conduct, a judge is to determine whether a thing is not simply "discreditable," but "inconsistent with the character of a member of the House of Lords"? But how is the matter to be determined? Is the incriminated peer to be called to the bar of the House, and counsel to be heard to show cause why his conduct should not be considered discreditable; or are you to invite a peer, who is accused of such unworthy conduct that you cannot sit with him, to sit and discuss with you whether or not the case against him is established?'

'The bill will put a new danger on peers of parliament allowing themselves to be called as witnesses.'[4]

Principle of Selection or Delegation

The Duke (then Earl) of Fife said, in the debate on the Earl of Carnarvon's 'House of Lords (Discontinuance of Writs) Bill':—

'I have very often thought this question over, and I become, every day, more convinced that the real solution of the difficulty lies in adopting a system of delegation as a

[1] 'Once a peer, always a peer,' Earl of Onslow.
[2] Hansard's *Parl. Debates*, third series, vol. cccxxxiv. 345-348.
[3] *Ibid.* 354.
[4] *Ibid.* 348-350.

basis of reform. In any system of delegation that may be adopted, those who are called "black sheep" would not be elected;[1] and you would also get rid of the anomaly of peers, who very rarely attended, or of young peers, almost fresh from school, coming down and being able to defeat useful and important measures. . . . I am convinced that legislative powers should be delegated by your lordships to a certain number of your body, and I cannot believe that it would "pass the wit of man" to "devise" some simple mode of carrying this out without interfering with the rights of actual sitting members.'[2]

'The most important provision' in the Earl of Dunraven's bill,[3]—'The House of Lords (Constitution) Bill,'—was 'the application of the principle of representation to the hereditary [English][4] peerage. This constituted no new departure, seeing that it already applied to the peerages of Scotland and Ireland. His object, in extending this principle to the [English][4] peerage, was two-fold. The efficiency of Second Chambers appeared to be in inverse proportion to the number of their members, the strongest being the smallest—the Senate of the United States. It was advisable, therefore, to provide for a reduction in the numerical proportions of this House. That was his first object. The second, and most important object, was to perpetuate the hereditary principle in this assembly. That could only be done by allowing that *birth* conferred a seat, but conferred it subject to one condition, *primâ facie fitness*. . . . The principle of selection—of the "survival of the fittest" must be brought into play. How is this to be brought about? There was but one plan that he could see at once simple and efficacious. That was the election as proposed by this bill—election by the hereditary peers of a certain number from among themselves to represent them. That would disqualify those peers not elected from sitting and voting in the House. His proposition involved dissociating, in the future, a peerage,

[1] The principle of selection or delegation would not get rid of 'black sheep.' 'Black sheep' would be likely to select as representatives peers like themselves.

[2] Hansard's *Parl. Debates*, third series, vol. cccxxxiv. 341.

[3] *Ibid.* vol. cccxxv. 518–540.

[4] 'British' was a slip.

as an honourable distinction, from a peerage as necessarily conferring a seat, merely extending to [English] peers the conditions attached to the peerages of Scotland and Ireland.'

The Edinburgh Reviewer[1] is of opinion that 'the obvious reform in regard to the hereditary peers is to extend the system of representation which at present exists in connection with the Scotch and Irish peerages, to the entire peerage'; and he cites Mr. Macpherson's views on the subject with approbation, exclaiming, 'This is thoroughly good sense, and we should be surprised if any conservative statesman or politician would object to such a change. It is essentially a conservative change, because it does not introduce any new constitutional principle; it simply extends the operation of one which was long ago applied to the peerages of Scotland and Ireland. . . . When a reform in a country such as Great Britain, with so many centuries of history, with a Constitution which has grown almost insensibly, and has moulded itself to the movements of each succeeding age, can be accomplished on existing lines, it has increased chances of a favourable reception, and it has the still further advantage of being based, not on an uncertain hope and anticipation, but on the firm ground of experience.'

I have already pointed out that the system of representative peers has recently been introduced into the Empire of Japan alongside of the hereditary system, which is confined to the princes and marquesses—there are no dukes.

Mr. Macpherson adopts[2] the views of the Duke of Fife and the Earl of Dunraven as to the election of representative hereditary peers by the general body of the hereditary peerage. 'That hereditary legislatorship is no necessary incident of an hereditary peerage we can see from the example of the Scottish and Irish peers. Since the Radical objection is to hereditary legislators, it might not be unwise to take them at their word, and for hereditary legislators to substitute elected legislators—hereditary peers elected by members of

[1] Vol. clxxviii. (October 1893), p. 428 (Critique of *The Baronage and the Senate*, by W. C. Macpherson).

[2] *The Baronage and the Senate*, p. 325.

their own order. Heredity is of the essence of baronage, but selection is of the essence of a Senate.'

'It will be the resuscitation, in a modern and reasonable form, of voting by proxy.'

Mr. Macpherson[1] is in favour of merging the whole five peerages of England, Scotland, Great Britain, Ireland, and Great Britain and Ireland in one imperial peerage of the United Kingdom—a 'Pan-Britannic Peerage,' as he calls it.

'The number of peers-representative should bear a certain proportion to the number of peers-electors, which proportion might gradually grow less with the expansion of the peerage, but should never descend below a certain minimum.'[2]

'The peers otherwise entitled to sit in person, whether as life peers, as peers by inheritance recreated, as peers by inheritance qualified by office, sitting in person, would, of course, possess no vote for the representative peers.'

Deducting these three classes of (1) peers by creation, (2) peers by inheritance recreated, and (3) peers by inheritance of senatorial qualification, which two last classes intersect each other, there then remain the peers by inheritance, neither recreated nor of personal qualification, and to these the representative peers system should be applied.[3]

Mr. Macpherson decides in favour of the Scotch method of election for the duration of a parliament: 'Only election for each parliament could keep the peers-representative in living touch with the peers-electors.'

Life Peerages

Mr. Fox, in 1792, contrasted life peerages unfavourably with hereditary ones:—

'The check upon making peers here he had ever considered as attended with this advantage, that, when the king made a peer, he recollected that he entailed an hereditary legislature on the country. A doubt existed whether the king had a right to make a peer for life; if the Crown had such a power, the life peers might overwhelm the

[1] *The Baronage and the Senate*, pp. 320–332.
[2] *Ibid.* p. 337.
[3] *Ibid.* p. 336.

hereditary peerage, and thus destroy the constitutional control of the aristocracy, in case they attempted to resist the Crown. Thus, under pretence of aristocracy, lords might be introduced as mere tools of the minister, and give government an opportunity to destroy the Constitution, and exercise despotic power in the most open shape.'[1]

The objections to the abolition of the hereditary peerage, and the substitution of life peers, are very neatly stated by Sir George Bowyer in his 'Commentaries on the Constitutional Laws of England'[2]:—

'The hereditary nature of the peerage is, in some degree, a check on the power of creating new peers, whereas peerages for life would be liable to be given away with far less caution and reserve. A peerage for life would probably be used as a retirement or reward for the mere creatures of the ministry and inefficient or worn-out functionaries; and a minister would be enabled, at any time, to gain an ascendency in the Upper House by a sufficient infusion of his own adherents. The whole body, though it might be respectable, would prove quite incapable, for want of authority and stability, of acting as a check on so formidable a power as that of the popular branch of the legislature.'

Elsewhere[3] Sir George Bowyer speaks of 'an aristocratic Senate' as 'independent and steady, because hereditary, and supported by the power and honour of the whole aristocracy, of which it forms the most illustrious part.' Without it, he says, 'the aristocratic part of the community would not be adequately represented in the Constitution, which would thus be placed on a comparatively narrow basis, instead of including all the orders and classes of men whereof the community is composed. An hereditary body, from its independence and stability, is more likely to act with firmness, caution, and prudence, without which it could not be an adequate check upon the sometimes hasty and ill-considered measures of the Commons (who are necessarily liable to be unduly impelled by their constituents and by the popular

[1] *Parl. Hist.* vol. xxix. 413; *Parl. Register*, vol. xxix. p. 392.
[2] P. 76. [3] *Commentaries on Constitutional Law*, p. 68.

voice), than any body of functionaries appointed for life by ministers at the head of one party or the other in the House of Commons, and who would be mostly creatures of those parties.'

I would remind my readers of the passage in the memorable speech of the Earl of Beaconsfield—then Mr. Disraeli—at Manchester Free Trade Hall, which I had the pleasure of listening to, and in which he proved conclusively that a peer, with remainder to his eldest son, had a much greater stake in the country, and a much stronger motive for fulfilling conscientiously his duty as a legislator, than a life peer could possibly have. The life peers' interests were confined to the present, the hereditary peer had the strongest motives to do what was best, not only for the present, but *for the future*. His peerage being hereditary, he could not shut his eyes to the consequences which might follow him, in the time of his successors, from his present action, and this made him more careful and painstaking, more statesmanlike and far-seeing in his views.

I quote the speech from memory, but these were the salient points in the passage referred to.

How little the *Westminster Review*[1] has grasped the popular sentiment as to the superiority, for legislative purposes, of hereditary peers over life peers is evident from the following passage :—

'As soon as the voters understood the existence of two classes of legislators in the Upper House, they would refuse to allow a bill, supported by a majority of the life peers, to be rejected by the votes of the hereditary peers.'

The great advantage of empowering the Crown to create annually a limited number of life peers (in addition to the Lords Spiritual, the Lords of Appeal in Ordinary, and the representative peers for Ireland and Scotland) would be this: it would enable the prime minister, with the assent of the sovereign, to offer to eminent public servants the distinction of a life peerage, instead of an hereditary one, *when their*

[1] *Westminster Review* for July 1894 (vol. 142, No. 1), p. 26.

means were inadequate to support the burthen of the latter.

The late Earl of Derby, in his common-sense way, observed:—'I cannot think, for my own part, why a useful public servant should not be allowed to pass the latter part of his political life in the Upper House, without the necessity at the same time—a necessity which might be extremely inconvenient to him—of introducing his children and grandchildren [in remainder] to all future time.'[1]

The question of life peerages was thoroughly investigated in the celebrated discussion on the Wensleydale peerage. The arguments used on either side will be found, *in extenso*, in Hansard's 'Parliamentary Debates,' third series, vol. cxl.

In 1856, on the advice of Lord Cranworth,[2] 'without consulting anyone who could keep him straight,'[3] letters patent were issued to Sir James Parke, an eminent baron of the Court of Exchequer, creating him 'Baron Wensleydale' *for life*, the object being an excellent one, viz. to add to the judicial strength of the House of Lords without a permanent increase in the number of its members.

An untimely fit of gout disabled Lord Wensleydale from presenting himself, with his writ of summons, on the first day of the session, and on February 7 Lord Lyndhurst proposed, in a masterly speech, to refer the exceptional patent to the Committee of Privileges. On a division the patent was referred to the Committee of Privileges by a majority of 33, the numbers being 'Content' 138, 'Not Content' 105.[4] All the law lords in the House, with the exception of the Lord Chancellor (who had advised the issue of the letters patent), voted with the majority. The argument that, without a reference from the Crown, the Lords had no power to adjudicate upon the right of a peer to sit and vote in their

[1] Hansard's *Parl. Debates*, third series, vol. cccxxviii. 856.

[2] Lord Chancellor in Viscount Palmerston's ministry.

[3] This is so stated by Lord Campbell in his *Lives of the Chancellors*, vol. viii. chap. ix. pp. 582, 583.

[4] Hansard's *Parl. Debates*, third series, vol. cxl. 263–381; May's *Constitutional History of England*, vol. i. chap. v. pp. 242–248.

House, was, no doubt, advanced by ministers, but was simply brushed aside. The old-world argument that there could be no loss of the ancient prerogative of the Crown to create life peers, through the discontinuance of its exercise for an immense lapse of time, because of the legal maxim *Nullum tempus occurrit regi*, was treated with more consideration. The abstract prerogative of the Crown to create a life peerage was scarcely questioned, but it was denied that such a peerage conferred any right to sit in parliament; it was treated as a mere title of honour, giving rank and precedence to its possessor, but not a place in an hereditary legislative chamber.

The Crown had, no doubt, withheld writs of summons from peers who were unquestionably entitled, by inheritance, to sit in parliament; but the Crown had also disfranchised ancient boroughs by royal prerogative, and had enfranchised new boroughs by royal charter. What would now be said of such an exercise of the royal prerogative? By constitutional usage, having the force of law, the House of Lords had been for centuries a Chamber consisting of hereditary councillors of the Crown, the only exception being the Lords Spiritual, while the House of Commons had been elected by the suffrages of legally-qualified electors. It would be as unconstitutional for the Crown to give a temporal peer a seat in parliament, as it would be for it to lower the franchise or to issue writs to unenfranchised towns.

But the most forcible line of argument used by the opponents of the patent was based upon the hazardous consequences of admitting this new class of peers. Was it probable that such peerages would be confined to law lords? If once recognised, would they not be extended to all persons whom the ministers of the day might think it convenient to obtrude upon the House of Lords? Might not the hereditary peers be suddenly overpowered by creatures of the executive government, appointed as nominees of the ministers of the day, and ready to do their bidding? Nay, might not the Crown be hereafter advised to discontinue the grant of hereditary peerages altogether, and gradually change the constitu-

tion of the House of Lords from an hereditary assembly to a dependent Senate, nominated for life only?

After an inquiry into precedents, the Committee of Privileges reported (and the House of Lords agreed) that the letters patent, even though fortified by the usual writ of summons issued in pursuance thereof, could not entitle the grantee to sit and vote in parliament,[1] Lord Farnborough[2] declares that 'the resolution has since been generally accepted as a *sound exposition of constitutional law*.'

So complete was the victory of the Peers, that, under the advice of the same ministers, who advised the Queen to issue letters patent creating Mr. Baron Parke a peer for life, a new patent was issued, creating him an hereditary peer of the realm, and, as such, he took his seat.

Since the Wensleydale case, efforts have been made, from time to time, to enlarge the number of life peers in the House of Lords, but not to such an extent as to swamp the hereditary element, which must always be the mainstay of that House.

Earl Russell,[3] in 1869, proposed to give the Crown power to create twenty-eight life peers, at the rate of four in each year.

'House of Lords,' by Mr. Spalding, pp. 107, 108: 'In 1869 Earl Russell brought in a bill to create life peers. The Marquess of Salisbury, in a remarkable speech, declared that the bill was "founded on a sound principle, and that, if in any way it requires alteration, it ought to be rather in the way of extension."'

Mr. Burt, M.P., in *The Nineteenth Century* for April 1894, p. 549: 'When, in 1869, Earl Russell brought forward a bill for the creation of life peers, Lord Salisbury delivered a remarkable speech in support of the bill. He declared that if Earl Russell's proposal required alteration, "the alteration ought to be rather in the way of extension than restriction."'

Lord Salisbury expressed approval of the idea; but in 1888 proposed to extend the total number of life peers to

[1] Hansard's *Parl. Debates*, third series, vol. cxl. 1152–1218; Report of the Committee of Privileges, Clark's *House of Lords Cases*, v. 958–982.

[2] May's *Constitutional History of England*, vol. i. chap. v. pp. 248, 249.

[3] Hansard's *Parl. Debates*, third series, vol. cxcv. 455.

be created under a legislative enactment to fifty, not more than five in one year.[1]

In both these measures the life peers were to be selected from certain 'categories,' and this was the rock on which they both split.

The late Earl of Derby made a very sensible speech on the second reading in 1888 of the House of Lords (Life Peers) Bill—a speech with which I thoroughly agree. He objected to the details contained in the bill as to the 'categories' from which life peers were to be selected :—

'He would point out that, while they were devising al these elaborate qualifications for life peerages, no qualifications whatever were required for the higher honour of an hereditary title.' 'He was afraid that all these attempts at minute definitions of personal qualifications were sure to have some weak points, and consequently to fail in some respects.' (Of this he gave illustrations.) At the same time he was favourable to the introduction of life peers, with a statutory limit as to the number to be created in any one year, so as to put it out of the power of a minister to swamp the independence of the House by a large creation of life peers.[2]

The Earl of Dunraven took the same view as the Earl of Derby respecting the undesirability of retaining 'the categories.' 'He was inclined to think, with other members of the House, that it would be better if the qualifications laid down for life peers were struck out of the bill.'[3]

The Duke of Argyll said :—'Of the proposed "categories" I do not approve. It is hardly possible to draw up "categories" which would not exclude men who might be admitted to that assembly with great advantage to all concerned.'[4] Earl Granville took a similar view.[5]

Lord Rosebery poked fun, very quaintly, at the 'categorical peers' :—'These servants of the Crown in every part of the globe will not come here in the first flush and bloom of their

[1] Hansard's *Parl. Debates*, third series, vol. cccxxvii. 392.
[2] *Ibid.* vol. cccxxviii. 855–8.
[3] *Ibid.* 861.
[4] *Ibid.* 862.
[5] *Ibid.* 863.

youth; they will be by no means likely to take a vivid or important part in our debates, and what I fear is this, that you will not strengthen the House of Lords as a legislative body, but that you will turn it into a sort of legislative Bath or Cheltenham, or perhaps, if it is not disrespectful to say so, into a sort of legislative hydropathic establishment, where these noble persons will take more care of their "constitutions" than of the constitution of the House.'[1]

After this witty demolition of the notion of 'categorical peers' on the part of his leader, it is not a little amusing that the best thing that Mr. Spalding[2] should have to offer us, by way of reform of the House of Lords, is the substitution of 'categorical' life peers for the present hereditary ones!

It is a remarkable fact that in his smart little *brochure* on 'The House of Lords; an Anomaly and a Danger,' Mr. Spalding, when he comes to deal with the reconstruction of that House, simply incorporates his heavier work 'by reference,' so that you must buy the latter to understand the former! The reason of this probably is that Mr. Spalding has found that his scheme of 'categorical peers' commends itself to nobody. The abolition of the hereditary principle goes too far for Conservatives, and the retention of the Second Chamber, consisting of 'categorical' life peers, doesn't go far enough for Radicals!

When the Appellate Jurisdiction Bill of 1876 was passing through the House of Lords, Earl Cairns, who had charge of it, said[3]:—'The Lord of Appeal in Ordinary was made, in the first instance, a peer for life, but his writ of summons to sit and vote would run only for the time he filled his office of Lord of Appeal.'

Mr. Disraeli, who had charge of the bill in the House of Commons, said[4]:—'We propose that there shall be two Lords of Appeal in Ordinary, chosen from the bench or from the learned bar, who shall be summoned to parliament as barons,

[1] Hansard's *Parl. Debates*, third series, vol. cccxxviii. 868.
[2] *The House of Lords; a Retrospect and a Forecast*, chap. xix. The 'Method of Reconstruction.'
[3] Hansard's *Parl. Debates*, third series, vol. ccxxvii. 927.
[4] *Ibid.* vol. ccxxix. 1686.

who shall exercise their privileges as barons while they hold these offices, and who, when they have ceased to hold them, will still possess the rank.'

It seems clear from these statements that it was the intention of the legislature to create the Lords of Appeal in Ordinary life peers, or barons for life, and at the same time Lords of Parliament (or senators) while continuing to hold office, life peers and *official* Lords of Parliament.

But all this was changed by the Appellate Jurisdiction Act, 1887, sect. 2. As Lord Halsbury, the then Lord Chancellor, said that the act of 1876 left the Lord of Appeal, on resignation, with the rank of baron, without the right to vote; and he explained the reason why it was proposed to alter this:—

'It was extremely inconvenient that, on occasions on which a noble and learned lord, not desirous of continuing to hold his office, was quite willing to give the advantage of his great learning to their lordships, the language of the statute should prevent him from affording any longer that assistance, notwithstanding that he still retained the rank and title of baron';[1] and the bill enabled a retired Lord of Appeal in Ordinary to sit, by including him amongst 'the Lords of Appeal' under the act of 1876.

Lord Herschell said,[2] in the course of the debate on the second reading:—'I think it right to call attention to one of the provisions of the bill, so that, at all events, it may be perfectly clear what is being done; for there can be no doubt that, *for the first time*, your lordships will, if you accept it, sanction the creation of life peers who, without filling an official position, may sit in this House.'[3]

Commenting on this extraordinary change, so quietly effected, in the constitution of the House of Lords, the author

[1] Hansard's *Parl. Debates*, third series, vol. cccx. 746, 747.

[2] *Ibid.* 749.

[3] When the Appellate Jurisdiction Bill, 1876, was in committee in the House of Commons, an amendment, moved by Mr. Serjeant Simon, to omit the words 'during the time that he continues in his office as a Lord of Appeal in Ordinary and no longer,' was negatived by 107 votes to 30 as 'trenching on the privileges of the House of Lords.' Hansard's *Parl. Debates*, third series, vol. ccxxx. 1162; vol. ccxxxi. 759, 764, 765.

of the 'Baronage and the Senate' says[1]:—'By this important innovation a principle of far-reaching consequence has been newly embedded in the constitution of the Upper Chamber.' The change is the introduction of lay life peers into the House of Lords apart from office.

The change, however, has been effected by acts of parliament and not by the royal prerogative. As the Earl of Milltown pointed out,[2] 'Sir James Parke's creation as a life peer was impeached by Lord Lyndhurst on the ground that the crown could make no such creation.' Lord Esher also pointed out this difference.[3]

It may be interesting to inquire: 'What is the position of Lord Russell of Killowen in the House of Peers?'

Lord Russell of Killowen was elevated to the Upper House as a baron for life under sect. 6 of the Appellate Jurisdiction Act, 1876.[4] If that section had stood alone he would only have been a 'lord of parliament' 'during the time that he continued in his office as a Lord of Appeal in Ordinary.' But, under the Appellate Jurisdiction Act, 1887, sect. 2, his membership of the House of Lords is not affected by his ceasing to be a Lord of Appeal in Ordinary. It is clear, therefore, that although Lord Russell of Killowen was appointed a life peer, to enable him to discharge the duties of a Lord of Appeal in Ordinary, he is still a life peer, although he is Lord Chief Justice of England.

Is he a 'Lord of Appeal'? The Appellate Jurisdiction Acts do not seem to have contemplated the possibility of an ex-Lord of Appeal in Ordinary, after accepting that office, vacating it by accepting a 'high judicial office.' As explained by Lord Halsbury, the object of the Act of 1887 was to enable a *retired* Lord of Appeal in Ordinary to continue to 'assist' in the House of Lords in the hearing and determination of appeals, notwithstanding his retirement.

[1] Part i. chap. ii. p. 37, *Constitutional Changes.*
[2] Hansard's *Parl. Debates*, third series, vol. cccx. 750.
[3] *Ibid.* 1060, 1061.
[4] 'Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall, by virtue of his appointment, be entitled during his life to rank as a baron.'

Lord Russell of Killowen is now Lord Chief Justice of England. 1. Is he a 'Lord of Appeal' as a *retired* Lord of Appeal in Ordinary? 2. Is he a 'Lord of Appeal' as Lord Chief Justice of England, that being a 'high judicial office,' when the holder is 'a peer of parliament'? It would seem that the expression 'peer of parliament' in the fifth section of the Appellate Jurisdiction Act, 1876, was intended to have a different meaning from 'lord of parliament' in sect. 6. It meant an *hereditary* 'peer,' there being no statutory enactment in force enabling a judge or ex-judge of 'a superior court' (sect. 25) to become a life peer. A life peerage, created by the royal prerogative, would not, as we have seen, entitle the holder to a seat in the House of Lords, according to the decision in the Wensleydale case.

One of the most ignorant articles on the House of Lords that I have seen in the magazines is that entitled 'The Position of the House of Lords,' in the *Westminster Review* for July 1894,[1] to which the writer has not had the courage to append his name.

'Among the barons,' the writer says, 'are about half a dozen judges, or ex-judges, called "law lords," some of whom are entitled to sit and vote as long as they live, others retaining the privilege *so long as they fill the office of judge of the highest tribunal in the land.*' There are no 'law lords' who fall under this last-mentioned category.

The Colonies, The House of Lords, the Imperial Chamber

'It is to the House of Lords,' says the Edinburgh Reviewer,[2] 'rather than to the House of Commons, that the colonies will look in the future for sympathy and consideration; and it is to the House of Lords that the nation must turn for the ultimate safeguards of its colonial dominions.'

'The peers act as connecting links between the peoples of the Empire. Imperial affairs are, for the most part, the affairs of the colonies and India. On these subjects the peers,

[1] Vol. 142, No. 1, p. 22. [2] Vol. lxxviii. (October 1893), p. 411.

with no fear of the constituencies before their eyes, can speak with a freedom and a *detachment from the local prejudices of the British Isles*, which is impossible to members of the House of Commons. The House of Lords is, beyond doubt, the imperial branch of the legislature.' [1]

'All that I have read and heard about colonial opinion,' says Mr. Spalding in his latest *brochure*, 'tends to convince me that the colonies look rather to the House of Lords than to the House of Commons for representation of their views and interests. It is not, perhaps, overstating the case to say that the colonists distrust the colonial policy of the House of Commons. The colonists are, at any rate, sure of a certain number of ex-governors-general in the House of Lords who are acquainted with their affairs, and who can act as their spokesmen. They are certain of no such representation in the Commons. To abolish the Second Chamber, and to exercise all the functions of government through a *locally-elected* parliament of the United Kingdom, would certainly tend to weaken one of the links in the slender chain which binds the colonies to the mother country. To the abolitionist who is also a "Little Englander," this consideration will cause no alarm. But to the abolitionist who is a 'Federalist," it will give pause.' [2]

The only 'categories' that have any interest for me are grouped by Mr. Macpherson [3] under the head—the, I must say, inviting head—of 'COLONIAL Life Peerages.' If life peerages can be employed as a means of strengthening the ties between the colonies and the mother country, by all means let them be so employed.

The Earl of Rosebery, in 1888, said [4]:—'I feel there would be great and important advantages in *inviting* the great self-governing colonies to send their Agents-general, or representatives delegated for that purpose, to sit, under certain conditions, in your Lordships' House. Such a scheme, such a principle,

[1] *The Baronage and the Senate*, part ii. chap. ii. pp. 134, 135.
[2] *The House of Lords; an Anomaly and a Danger*, by T. A. Spalding, LL.B. Published by 'the Eighty Club' (1894), p. 36.
[3] *The Baronage and the Senate*, part iv. chap. ii. pp. 300–319.
[4] Hansard's *Parl. Debates*, third series, vol. cccxxiii. 1571.

if carried out in practice, would involve the necessity of the government of the day being able to *nominate*, for the duration of their existence, some official or representative who should bear the task of representing them in this House if they were not otherwise represented.'

Mr. Spalding contends that, if a House of Lords like ours were essential, the colonies would have incorporated such a chamber in their legislatures, although he admits that 'a peerage is the growth of centuries, and cannot be so created in a day!' An attempt, however, so to create it was made in 1791 by the imperial legislature (Quebec Government Act, 31 Geo. III. cap. 31).[1]

That enactment, which is a most elaborate one, divided the province of Quebec into two provinces, Upper Canada and Lower Canada, each dignified with a legislative council and a representative assembly of its own. It aimed at blending, in local colonial legislation, the monarchical, the aristocratic, and the democratic principles,[2] by creating an hereditary peerage in connection with the legislative councils of both provinces.

Lord Brougham [3] makes this remarkable admission:—

'It is certain that the existence of an aristocratic body in any state, whether it be mixed with monarchy or with democracy, greatly tends to promote order and to facilitate the administration of affairs by aiding the magistrate in maintaining subordination. The manner in which a gradation of ranks produces this important effect is obvious; equally obvious are the evils which necessarily arise from the want of such a controlling influence—an influence ever superseding the more harsh appeal to the direct force of the executive power. We shall find abundant proofs of this when we come to examine the American and other democracies. At present we may only remark that a very great error has been committed in our remaining colonies in not introducing into their system an aristocratic body.'

[1] *The House of Lords; a Retrospect and a Forecast*, chap. i. pp. 6–8. The act is set out in the Appendix, so far as it relates to the creation of a colonial peerage. [2] See chap. xxii. Speech of Charles James Fox
[3] *Political Philosophy*, part ii. chap. vi. p. 62.

An excellent means of infusing a colonial element into the House of Lords has, in recent years, been adopted by successive prime ministers. I mean by the appointment of eminent colonial bishops to English sees, so that, in their turn, they are elevated to seats in parliament as Lords Spiritual. In the appointment of the Bishop of Melbourne—Dr. James Moorhouse—to be Bishop of Manchester, an excellent precedent was set. The recent selection of the Bishop of Adelaide—Dr. George Montague Kennion—to be Bishop of Bath and Wells is also most satisfactory.

Inadequate Opportunities of Considering Bills

The House of Lords has just reason to complain of the way in which it is treated with reference to legislation.

The late Earl Beauchamp pointed out, in the discussion on Lord Salisbury's House of Lords (Life Peers) Bill,[1] that 'if those who distributed parliamentary business would take care that an adequate number of measures of public importance should *originate* in that House, the influence and authority of their Lordships' House would be very much increased. Then as to bills coming up from the other House, it tended to injure very much the authority of their Lordships' House when those bills were hurried through. When any bill was brought up at the end of the session, and passed at a time when their Lordships could not give it the full consideration it deserved, a very great blow was struck at the influence of that House.'

The Earl of Beaconsfield, speaking on August 30, 1880, in the House of Lords, said[2]:—

'The manner in which the legislative business of the country is conducted, so that, on the verge of the month of September, your Lordships are called upon to consider matters of gravity, is a deplorable state of affairs. It is one which *it is impossible can be long endured.*'

[1] Hansard's *Parl. Debates*, third series, vol. cccxxviii. 855.

[2] *Ibid.* vol. cclvi. 615. Speech on the second reading of 'the Ground Game Bill, 1880.'

Recent Enlargement of the Privileges of Peers

Lord Randolph Churchill did very good service to the State in fixing the attention of the House of Commons on the sessional order,[1] which says 'that it is a high infringement of the liberties and privileges of the Commons of the United Kingdom for any Lord of Parliament, or any other peer or prelate, to concern himself in the election of members to serve for the Commons in Parliament.'

That the sessional order had a binding effect on peers with a fine sense of honour is evident from the fact which was mentioned in the course of the debate,[2] that the Duke of Devonshire was so anxious not to infringe the privileges of the House of Commons, that he put off a meeting which he had fixed before his accession to the peerage, and before the death of Mr. Wardle, member for Derbyshire, till a date subsequent to the election which arose from Mr. Wardle's death. In addition to being a peer of the realm, the Duke was also lord-lieutenant of Derbyshire, and the sessional order is aimed against lord-lieutenants of counties as well as against peers. It is clear, therefore, that the sessional order had a binding effect on the mind of the Duke of Devonshire, and his conscientious scruples are undoubtedly shared by many other members of the House of Lords.

The Chancellor of the Exchequer, Sir William Harcourt, regarded the motion of Lord Randolph Churchill as 'a trumpery proceeding,' and ridiculed the sessional order.

Mr. Labouchere declared it was 'as absurd as that directing the search for Guy Fawkes at the commencement of each session,' and said he 'would be delighted to see the peers on election platforms.'

Sir William Harcourt, having moved 'that the House do now proceed to the orders of the day,' Mr. Balfour asked, 'Does the Government mean to do anything about the sessional order?'

[1] The third of the election sessional orders passed at the beginning of the session. See May's *Parliamentary Practice*, 10th ed. App. p. 838.
[2] By Mr. Balfour, *Times*, Tuesday, March 20, 1894.

Mr. Campbell-Bannerman :—'If the House passes to the orders of the day, that means that *the question is settled.*'

Lord Randolph Churchill's resolution was negatived without a division, and Sir William Harcourt's motion was agreed to.

After this most people will be of opinion, with the *Times*, that 'the sessional order is useless for any practical purpose.'

The Peers will be fully justified in taking part in elections in future; indeed, it will be their *duty* to do so, when the existence of their constitutional veto is submitted, by a formal *referendum* to the electors of the United Kingdom.[1]

2. THE REFORM OF THE HOUSE OF COMMONS

The Sovereign Committee

It must not be supposed that the Neo-Radicals are at all satisfied with the House of Commons as it is. They apply to it, impartially, the converse of Pope's aphorism, 'Whatever is, is right'; and as the House of Commons 'is,' it follows, as the light does the sun, that it must be 'wrong.'

Should it be 'ended' or 'mended'? Let us briefly consider a scheme for 'mending' it (when the House of Lords has been abolished).

It used to be alleged as a reproach against the Tory party that their system of government was 'government by commission.' Mr. John Burns's plan is 'government by committee.'[2] An imperial convention, elected for three years by universal suffrage, consisting of 500 members exactly, neither more nor less, with an ornamental Speaker powerless to control the members. All business—executive as well as legislative—to be transferred to permanent committees, in whom the sovereign power is to be vested, subject to a veto by the convention, without waste of time in deliberation. The party

[1] See the Earl of Rosebery's speech at St. George's Hall, Bradford, *Daily News*, October 29, 1894, already referred to, and Lord Brougham's opinion cited, *supra*, Chap. XXVIII.

[2] See on this, Mr. R. Wallace, M.P., in the *Fortnightly Review* for June 1894 (No. cccxxx. N.S.), p. 710.

system is to be abolished. The throne, the cabinet, and the other paraphernalia of constitutional government, are all apparently to step aside in favour of the sovereign committee.[1]

The *Spectator* is cruel enough to suggest that such a scheme, if carried out, would lead up to a second Oliver Cromwell:—

'Mr. Burns's plan would finally be superseded by some form of *military rule*, adopted by all as a protection against the dissolution of society.'[2]

Government by the sovereign committee goes deeper down, of course, into the foundations of society than the reforms usually advocated by the Gladstonian party—*e.g.* 'one man, one vote,' and shortening of the period of occupation to three months, and abolition of the rating qualification; but I hold that these (so-called) 'reforms' are almost equally objectionable. 'One man, one vote,' is based upon the principle of manhood suffrage (which has been a curse to every nation that has adopted it), and is quite irreconcilable with the first principles of household suffrage. If a man fulfils in one county the conditions prescribed by the Franchise Acts, why should he be deprived of his vote in another county where he equally fulfils those conditions? The thing is absurd. Abolish the conditions and household suffrage is gone.

The effect of reducing the qualifying period of residence to three months would be to hand over the government of the British Empire to the migratory, fluctuating population, the waifs and strays of society, a kind of casual ward suffrage!

The abolition of the rating qualification would put a premium on the non-fulfilment of the elementary duties of a citizen, and remove an incentive to their fulfilment. All these proposed 'reforms' are bad—very bad.

The present Government, however, professes to reflect the popular will. Unionists contend that it does not reflect it, on

[1] See speech of Mr. John Burns at the Washington Music Hall, Battersea, on Sunday, March 25, 1894.

[2] The *Spectator*, March 31, 1894 (No. 3431). 'The Future of Parliament.'

account of Ireland having twenty-three more votes than she is entitled to. This over-representation swells the ranks of the Irish Nationalists, the main prop of the Government, and gives them a wholly factitious importance. The Home Rule Bill fixed the number at 80, instead of 103. Let it be the aim of the Unionists to carry to a successful issue the great and righteous principle of 'ONE VOTE, ONE VALUE.'

Sir Charles Dilke is in favour of throwing open the doors of the House of Commons to peers generally.

'I myself,' he says, 'made a suggestion many years ago, that peers should be allowed to stand, if they would, for the House of Commons, and the electors be permitted, if they chose, to select them as representatives. It is a change which, undoubtedly, would have the effect of improving the constitution of the House of Commons and of weakening the House of Lords. Great peers would be excellent candidates. Others of the same party would have no chance against them. There are few Liberal candidates who could poll such numbers as Lord Spencer or Lord Rosebery. There are few Conservative commoners who could hope to be selected where Lord Salisbury or the Duke of Argyll (for I must class him as a Conservative, which essentially he is) was in the field.'[1]

Of course, if all peers were eligible for seats in the House of Commons, it would be quite a minor reform for the eldest sons of peers to continue to retain their seats in the Lower House on the deaths of their fathers.[2] An interesting discussion on the position of the eldest son of a peer on the death of his father arose in the House of Commons in reference to the seat of the Hon. Bernard Coleridge, M.P. for the Attercliffe division of Sheffield. On the one hand, Mr. Chamberlain contended that a mistake had been made by the Government, or, rather, by the House of Commons, in affirming that the Hon. Bernard Coleridge's seat had been vacated by his acceptance of the office of steward of the Chiltern Hundreds. By affirming

[1] Sir Charles Dilke, in Routledge's *Subjects of the Day*, Feb. 1891, p. 101.

[2] See the article by three eldest sons of peers, in the *Nineteenth Century* for April 1894 (No. 206), p. 527.

this, the House of Commons had ignored the fact that the recipient of the office was not 'the Hon. Bernard Coleridge' at all, but 'Lord Coleridge,' his father having died some time before, and therefore the Chiltern Hundreds had been granted to a peer! As the writ of summons to the House of Lords is only granted by the Crown on the application of the new peer, if might thus be in the power of the new peer, by delaying his application for the writ of summons, to continue to occupy the position of a member of the Lower House. (Of course, the eldest sons of peers in the Lower House were delighted with this idea.) Sir William Harcourt, on the other hand, contended that, if the writ for the election of a new member were issued before the writ of summons, on the ground that the old member had become a peer, the House of Commons would be usurping the functions of the House of Lords, and determining that the old member had become a peer; whereas the House of Lords might, subsequently, determine that he was not a peer! The House of Commons must have evidence that the old member had become a peer before issuing a writ for a new election, on the ground that he had become a peer. The best way to solve the question was to grant the old member the Chiltern Hundreds, and so accelerate the election. The Hon. G. Curzon, one of the three eldest sons of peers who wrote the article in the *Nineteenth Century*, thanked the Chancellor of the Exchequer for stating that, until evidence was offered, the House had no right to vacate the seat on the ground that the member had become a peer.

The matter seemed so intricate, that there was a general sense of relief when Sir William Harcourt assented to the proposal of Mr. Chamberlain that a select committee should be appointed to inquire into it.

Lord Rosebery proposed, in 1884, that any peer was to be at liberty to accept or refuse a writ of summons to the Upper House, and if he refused, he was to be eligible for the Lower.[1]

[1] *The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, LL.B., chap. xi. p. 125.

CHAPTER XXX

1. THE ABOLITION OF THE HOUSE OF LORDS [1]

WHEN the Neo-Radicals want to prevail upon the House of Lords to pass some measure, either of a revolutionary nature, or designed to gratify their greed of gain or lust for power, or both, they masquerade in the attire of the regicides, and shout 'Down with the House of Lords! Boo-oo-ooh!'

The regicide's resolution is trotted out on the Neo-Radical platforms:—

'In the opinion of this meeting the existence of the House of Lords as a branch of the legislature is a danger to the state, and it ought to be abolished.' [2]

Because, forsooth, the House of Commons has the sole right of originating money bills, which alter the incidence of taxation, that House ought to have the sole right of making *novel ley*, and even of altering the Constitution!

Nothing is clearer than that the 'ending' of the House of Lords would be the ending of all legislation, as the House of Commons could not, single-handed, enact laws binding on the subject, who would have a right to *refuse to pay taxes* levied by its sole authority, and to *take up arms* against it, if it attempted to enforce payment. The levying of taxation by virtue of the royal prerogative could not be more illegal.

The destruction of a great and ancient institution is an eminently dramatic thing, and no other political achievement usually produces so much noisy reputation in proportion to the ability it requires. Hence to minds ambitious only of notoriety, careless of the permanent interests of the nation, and destitute of all real feeling of political responsibility, a policy of mere destruction possesses an irresistible attraction.[3]

[1] At the Leeds Conference on June 20, 1894, a young delegate (on a form) pronounced in favour of the 'total ablution' of the House of Lords. *Daily Chronicle*, June 21, 1894.

[2] 'The London Liberal and Radical Union,' February 12, 1894, *et passim*.

[3] Lecky's *History of England*, vol. i. pp. 176, 177.

I attended the first Hyde Park demonstration against the House of Lords, marching in procession from the Conservative Club, St. James's, right on to No. 10 platform, Hyde Park. The processionists did not elicit a single cheer *en route* from the vast audience.[1]

At No. 10 platform I found 'Mr. W. C. Steadman, L.C.C. (chairman),' attacking Mr. Labouchere, 'the proprietor of a society paper called *Truth* who voted for "contracting-out" with Mr. McLaren!'

I moved to No. 9 platform. Mr. Samuel Woods, M.P., was stating that 'women used to work in coal-mines':—

'In 1842 Lord Ashley, afterwards Earl of Shaftesbury, introduced a bill to do away with this, but *the House of Lords threw it out.*' Utterly untrue![2]

I moved to No. 8 platform, 'Alderman Ben Tillett, L.C.C. (Dockers), chairman.'

A much larger crowd surrounded this platform. No cheers, however, greeted him.

'We're not going to turn this great meeting,' he said, 'into a demonstration against the House of Lords. We're not fighting the Peers. There is treachery on both sides. There was only a majority of 22 *in the House of Commons* against Lord Dudley's amendment. While we've one eye on the House of Lords, we'll keep the other on the House of Commons.'

I then passed on to No. 7 platform, 'Mr. Maudsley, J.P. (cotton spinner), chairman.' The speaker alluded pathetically to the Employers' Liability Bill. 'I want no man handless or footless through the carelessness of employers. Get the insurance by all means.' This was the first speaker I heard applauded. He appealed to the sympathies of his audience for working men maimed in the course of their employment, instead of attacking the House of Lords.

I went on to No. 6 platform, 'John Burns, M.P. (En-

[1] The processionists occasionally cheered themselves, to keep up their flagging spirits!

[2] This was an improvement on the author of *Fifty Years of the House of Lords*, and Mr. Burt, M.P. See Chap. XX. *supra*.

gineers), chairman.' A vast crowd surrounded the platform, but there was no applause. The speaker was giving some dry statistics, in a voice that penetrated to me, as to the number of accidents. One of the bystanders said to another, as he moved off from the meeting, 'He knows what he's going to say by heart!'

I went to No. 2 platform.

'We *are* our "brother's keeper." The cries of the orphaned children and of the widows reach us.'

No. 1.—Mr. Alderman Inskip, J.P. (Leicester), chairman: 'Lord Salisbury and Lord Dudley are liars.'

Mr. W. Parrot (Leicester). 'We want protection.' [One of the audience to another: 'He's a liar!'] 'The Lords indeed!' Then, in broken periods, I heard:—'Who are they?' 'Who's appointed them?' 'Irresponsible party'—'No right to exist!'

I might refer this inquiring demagogue to the Earl of Rosebery for information on the subject.

Speaking of the House of Lords at Liverpool, on Dec. 3, 1884, Lord Rosebery said:[1]—'That House had been among them about six centuries, and had become so interlaced and woven with all their other institutions, that he did not believe they could put an end to it suddenly without producing a wrench which would cause many other institutions to fall with it. He hoped his Liberalism would remain above suspicion when he said that he could not view the destruction of the House with approval. He could not see with pleasure one old edifice after the other toppling down without knowing where the work of destruction was to stop, and what institutions were to be allowed to remain.'

On August 26, 1894, I was engaged in reading in the library at my club, when I heard the sound of the leading band of the procession to Hyde Park from the Thames Embankment as it passed along Pall Mall. I thought the procession would be an hour in passing, and that it would be time enough to join it in (say) half an hour. What was my

[1] *Times*, December 4, 1884.

surprise when, in fifteen minutes,[1] the last band passed, and the music entirely ceased! The explanation I found in the columns of the *Times*[2] next morning, that only 1,500 processionists assembled on the Thames Embankment. The *Westminster Gazette*,[3] the most honest of the government papers, collates the various accounts, and draws the following conclusion:—'In the mouth of all these witnesses we are afraid the comparative smallness of the demonstration must be taken as fairly established.'

'It was quite a failure as a demonstration.'[4] 'A miserable fiasco.'[5] 'A feeble little procession.'[6] 'A more complete break down has never been witnessed.'[7] 'The procession was the smallest that has entered the park for years.'[8] 'A fleabite.'[9]

The leading Radical journal has the unparalleled effrontery to say[10]:—'Not fewer than 100,000 people were present' (!)

The *Daily Chronicle* estimates the numbers at 40,000 less![11]

I marched in the procession without let or hindrance, and was actually offered a seat on one of the platforms! I can fully bear out the statement that 'the crowds in the park and the streets regarded the demonstration with perfect indifference.'[12] 'The putting of the resolution,' says the *Morning Post*,[13] 'was, if possible, more farcical than the rest of the proceedings.'

'At the moment of passing this sweeping condemnation and cheerful exhortation, the platforms were almost deserted, for the majority of the audience went off in high good temper with their wives and children to look at the swans careering in the Serpentine.' This is the testimony of the *Daily Telegraph*.[14]

[1] 'A good procession takes about an hour to pass. This one took fifteen minutes,' *The St. James's Gazette* of August 27, 1894. ('What a correspondent saw.')
[2] Of August 27, 1894.
[3] Of August 27, 1894.
[4] *Globe*, do.
[5] *Pall Mall Gazette*, do.
[6] *Evening News*, do.
[7] *Morning Post*, do.
[8] *Standard*, do.
[9] The *Star*, August 27, 1894.
[10] *Daily News*, do.
[11] Of August 27, 1894. 60,000.
[12] *Evening News*, do.
[13] Do.
[14] Do.

The only platforms at which anything more than a languid interest was shown were No. 6 (Mr. William O'Brien, M.P.) and No. 8 (Dr. Tanner, M.P.)

At No. 6 platform Mr. William O'Brien (whose name was not amongst the published list) had a crowd round him, chiefly Irish (fully a thousand[1]), and his observations were received with real cheers. Outside the crowd a sandwich-man was shouting, 'Go and hear Dr. Tanner, at No. 8 platform!' The Irish National League seemed to have possession of both Nos. 6 and 8 platforms.

At No. 8 platform a crowd, chiefly Irish, was assembled, attracted by Dr. Tanner, M.P. Dr. Tanner was just saying that 'Solomon in all his glory was not arrayed like one of these [peers] (laughter). What has the House of Lords done for the people of England? Nothing!' ('Hear, hear, Doctor,' from the crowd). 'It is a House of bastards![2] We must find some means of ending it. I should like to open a gallery and exhibit them at a penny each. I hope every man *and woman* will claim the rights of manhood.'

Let me contrast with Dr. Tanner's 'midsummer madness' the eloquent testimony of the man on whose shoulders the mantle of Mr. Parnell has fallen:—

'The House of Lords is an integral portion of the institutions of England. The men who compose it are in great measure the descendants of men who, in the past history of Great Britain, fought the battles of England against the world; and to abolish that portion of the institution which in antiquity is older than the House of Commons, would mean a revolution greater than that has taken place in the whole constitutional history of England. Home Rule is a great constitutional question, but it sinks into insignificance compared to the vast magnitude of the constitutional question

[1] The *Daily Chronicle* makes the ridiculous statement that around No. 6 platform 'were gathered some 7,000!'

[2] The hereditary principle was so firmly rooted in the Duchy of Normandy that the son succeeded to the father, although a minor, and born out of wedlock! See Pike's *Constitutional History of the House of Lords*, chap. ii. pp. 18, 19.

raised by the demand for the abolition of the House of Lords.'[1]

At No. 8 platform—the first I came to—Mr. S. Masterson (secretary of the Ironfounders' Union) said:—'I am sick of these demonstrations! This is the third time I have been denouncing the Lords. You will never achieve anything so long as the sons and nephews of the peers are in the House of Commons. Their interests are identical with those of the House of Lords.'

At No. 1 platform (chairman, Mr. J. A. Fitzpatrick) Mr. Hugh Hoare, M.P., observed:—'The Radicals say that the House of Lords must be "ended," not "mended." There is one body that wants "mending"—the House of Commons.'

At No. 5 platform (Women's Liberal Federation) Miss J. Wimbold (a hard-featured north-countrywoman) was addressing the meeting very indistinctly. People said, 'We can't hear!' She said, 'We are the masters!' (a bystander: 'It's a mistake!'). 'Say to the candidates,' she continued, 'Are you going in for the man who is born a duke?'

At No. 9 platform Mr. W. C. Steadman, L.C.C. (who has a good voice) said:—'We demand to live out of the produce of our labour.' [Here an old man, seeing me taking down the speech, interpolated:—'It isn't worthy of being reported'; he was jostled out of the crowd!] 'I sincerely hope this agitation is not going to be a bogus agitation. Let us "go the whole hog or none"!' (No cheers.)

Mr. A. Perry (North-East Bethnal Green Radical Club) said:—'We have an honest purpose in view. We're not merely a lot of men come to rob another lot of men.'[2]

At No. 11 platform Dr. Tanner was speaking, having migrated from No. 8:—'Take your coat off,[3] double your fists

[1] See an article in the *St. James's Gazette*, Tuesday, October 9, 1894. Speech of Mr. J. Redmond.

[2] My purse was stolen, while noting the speeches.

[3] The Earl of Rosebery at Bradford used 'Athletic Metaphors' (see Lord Salisbury in the *National Review* for Dec. 1894, p. 451.) 'You must be prepared to take off your waistcoats—not merely your coats.' *Daily News*, October 29, 1894. The phrase 'take off my coat' was Mr. Parnell's, who said he would not have taken off his coat except to make Ireland entirely independent of England,

and let them have it.' (Applause.) 'Away with "rats," away with sharebrokers, Jabez Balfour men, and that sort!'

On leaving this platform I noticed a great commotion in the adjacent crowd. The police were evidently running some one in. There was a red flag with 'S.D.F.' upon it. An attack had been made against this flag by the demonstrators against the Lords, and the 'Social Democratic Federation' made a rally, and, taking off their hats, began cheering for themselves, and sang the 'Marseillaise.'

The *Daily News* says that the attack was due to their expressing 'contempt for the great gathering around.' Other papers said that the Socialists had been 'denouncing Gladstone and the House of Commons.'[1]

I overheard one Irishman say to another, as I was leaving the park, 'There are only six Irish bands in the whole of the metropolis; we had to get German bands.'

At the Peckham 'demonstration' in October 1894, Mr. T. E. Healey said 'they could easily, in five minutes, put an end to the House of Lords by introducing in the House of Commons a bill of one clause, which should read, "There is no House of Lords"; and if the Queen refused to agree to it, then they could bring in another bill, which should be, "There is no Queen of England"!'[2]

The House of Lords does not, as is sometimes represented, possess a veto with regard to any measure in any sense in which a veto is not possessed by the House of Commons, and neither has any constitutional power to force the acceptance of any measure upon the other.[3]

The veto of the House of Lords, like the veto of the Crown, became almost atrophied by disuse. The House of Lords was insensibly losing its importance as a working factor in the machinery of the Constitution. Government by groups has

[1] 'Fenian Home Rule' pamphlets were also distributed.

[2] *Times*, Oct. 15, 1894.

[3] Pike's *Constitutional History of the House of Lords*, chap. xiv. p. 335. 'If by the term "veto" it is intended that the Upper House exercises a constitutional function over parliamentary bills different from that exercised by the Commons, the phrase is wholly inaccurate.' Mr. Atherley Jones, M.P., in the *Nineteenth Century* for Dec. 1894 (No. 214), p. 838.

weakened the Commons and strengthened the Lords. It was necessary to find some constitutional counterpoise to the erratic and uncertain motions of an assembly which might, at any moment, be at the mercy of a set of determined adventurers, who were prepared to fight for their own special object, regardless of the general welfare. The Radical outcry does not prevent Englishmen from realising that they are being ruled temporarily by a coalition, which is supported by those who are out of accord with the feelings, habits, and interests of the larger number of the inhabitants of England. At this crisis the House of Lords is able to insist that the rights of the majority shall be respected, at least till they have had the opportunity of bringing their case before the whole electorate, and receiving their verdict upon it at the polls.[1]

'The abolition of the House of Lords,' says Mr. Spalding, 'is outside the range of practical politics.'[2]

'Some there are, although they are chiefly to be found among the older Radicals, who are dying out, whose idea of "reform of the House of Lords" consists in the removal of the bench of bishops. Constitutionally, the removal of the bishops would be as great a revolution as the abolition of the House itself; for it would be an extermination of one of the estates of the realm. . . . The removal of the bench of bishops, taken by itself, is not "a reform" ever likely in these days to be carried.'[3]

On July 23, 1833, the Earl of Radnor tried to present a petition from 'the Political Union of Glasgow,' praying that their Lordships would repeal the act of Charles II., by which the bishops had been restored to their seats in parliament.

The language of the petition was couched in such disrespectful terms that the House intimated that it amounted to a breach of privilege, and the Earl of Radnor withdrew it.[4]

The Earl of Aberdeen, afterwards prime minister, said:—

[1] See, on this subject, an extremely thoughtful and well-written article in the *New Review* for March, 1894.

[2] *The House of Lords; a Retrospect and a Forecast*, chap. xviii. p. 230.

[3] *Subjects of the Day* (No. 4, February 1891). 'The House Lords,' part viii., by Sir Charles Dilke, Bart., M.P., pp. 100, 101.

[4] Hansard's *Parl. Debates*, third series, vol. xix. 1082-1084.

'At present the petitioners confined themselves to calling for an exclusion of spiritual peers from that House, but they might require the abolition of the House itself, or they might demand that the Crown should be taken from the King's head. The mere refusal of the prayer of the petition was not sufficient. It ought to be rejected altogether.'

In 1834 the Commons refused leave to bring in a bill 'for relieving the bishops of their legislative and judicial duties in the House of Peers' by a majority of more than 2 to 1.[1] By a much greater majority in 1836 they refused to affirm 'that the attendance of the bishops in parliament is prejudicial to the cause of religion.'[2]

On February 16, 1837, Mr. C. Lushington brought forward a motion that 'it is the opinion of this House that the sitting of the bishops in parliament is unfavourable in its operation to the general interests of the Christian religion in this country, and tends to alienate the affections of the people from the Established Church.'[3] Lord John Russell, in opposing the motion,[4] on behalf of the Liberal Government, said, 'The hon. gentleman who brings forward this motion brings forward a proposal for a change in a *very essential* principle of the British Constitution. The Established Church is a distinct part of the Constitution of this country. The bishops, by holding seats in parliament, are the acknowledged representatives of that part of the Constitution.'

Sir Robert Peel said of Lord John Russell's speech, that he 'never heard a speech delivered in a more manly manner, or one which reflected greater credit on the noble lord's abilities and judgment.'[5]

The motion was defeated by more than two to one[6] in the reformed House of Commons. Mr. Gladstone voted against it.[7]

[1] March 13, 1834. 'Ayes' 58, 'Noes' 125. Hansard's *Parl. Debates*, third series, vol. xxii. 131–153. May's *Constitutional History*, vol. i. chap. v. p. 251.

[2] April 26, 1836. 'Ayes' 53, 'Noes' 180. Hansard's *Parl. Debates*, third series, vol. xxxiii. 311–322. May, *ubi supra*.

[3] Hansard's *Parl. Debates*, third series, vol. xxxvi. 609–633.

[4] *Ibid.* 619–625. [5] *Ibid.* 627.

[6] 197 to 92, majority 105. *Ibid.* 630. [7] *Ibid* 632.

On June 21, 1870, Mr. Somerset Beaumont moved for leave to introduce a bill 'to relieve Lords Spiritual (thereafter consecrated) from attendance in parliament.' The prime minister, Mr. Gladstone, opposed the motion in a powerful speech, and leave was refused to introduce the bill (a very exceptional course) by 158 votes to 102, majority 56.[1]

In the course of his speech Mr. Gladstone said[2]:—

'Dismissing the bishops from the House of Lords you very greatly weaken the influence of the State over the Church. If it were necessary, it would not be difficult to cite cases in which bishops have been called to account for the administration of their dioceses in the House of Lords. Any aggrieved clergyman, any aggrieved layman—directly, if that layman be a peer, indirectly, and through any member of the House of Lords, if not a peer—has always the means of calling to account for acts of injustice, acts of oppression, acts of bigotry, acts of misconduct or misjudgment, or whatever they may be, the bishops of this country. This motion must be regarded as a motion which will greatly diminish, not the influence of the State only, but the influence of the external world, the influence of society, the influence of opinion, the influence of that which is called modern civilisation, outside of the episcopal sphere, over the episcopal body.'

Mr. Gladstone proceeded to vindicate the Lords Spiritual from the charge that they were 'devoid of a spirit of independence,' by historical references; and then stated that the House of Commons and the country were alike opposed to the unicameral system; and that 'if there is to be a House of Lords in the country, *as there ever has been*, it is well that that House of Lords should be as strong as possible. It is desirable that we should see collected in that assembly all the elements of strength; and among the elements,' he said, 'I know none so important as *diversity*. You cannot very well, in an hereditary House of Lords, afford to part with elements of weight and power which that Chamber derives from the presence of the bishops.' 'What candid men,' said

[1] Hansard's *Parl. Debates*, third series, vol. ccii. 676–704.
[2] *Ibid.* 688–701.

Mr. Gladstone, 'sitting on these benches, will doubt or hesitate for a moment to admit that during many years—during all the years that the present age remembers—the bench of bishops has contributed to the intellectual force of discussions in the House of Lords, in a proportion far transcending the numbers by which that body is represented there? To some extent *they represent the popular element* in that assembly. Survey the bench of bishops, and you will hardly find a man upon it who has not been *put there on account of his merits*; and you will find but a moderate proportion of these men who have not raised themselves from stations comparatively humble. The very fact of such a number of men being there by means so unexceptionable—by their merits, by their character, by their services, not by subserviency, not by base compliance—does constitute, in no ignoble sense, the presence of a popular element in the House of Lords. It is an element which, at any rate, comes from the deep and broad strata of the community, and which contributes vigour to that assembly.'

The *Speaker*, the able weekly organ of the Gladstonians, in an article which appeared on April 7, 1894,[1] says:—'It has been Mr. Gladstone's lot to be, more or less, in open conflict with the peers throughout his whole political career.'

How utterly baseless this assertion is, let those judge who have studied his votes as revealed by the searching light of Hansard's 'Parliamentary Debates!'

Mr. Labouchere, on November 21, 1884, moved the following amendment to the motion 'That Mr. Speaker do now leave the chair,' to go into Committee of Supply:—

'That in view of the fact that the Conservative party is able, and has, for many years, been able, through its permanent majority in the House of Lords, to alter, defeat, or delay legislation, although that legislation has been recommended by the responsible advisers of the Crown, and approved of by the nation through its elected representatives, it is desirable to make such alterations in the relations of the two Houses of Parliament as will effect a remedy to this state of things.'

[1] Vol. ix. No. 223.

This motion was defeated by a majority of nearly 2 to 1—145 to 71—the Nationalists voting in the minority.[1]

Mr. Labouchere in 1884 said:—'Recent events have shown that the House of Lords possesses far more power and influence, not only in Conservative circles but also in Liberal circles, than I and many other members of this House had anticipated. At the last general election a very large Liberal majority was returned. The prime minister was placed in power. I do not think that for many a year a more powerful minister has held office in England. He proposed to first pass a Franchise Bill, and, when that was perfectly safe, to pass a Redistribution Bill. The Franchise Bill was passed through this House by a large majority. The Lords determined not to pass the Franchise Bill. They would not pass it because they said they insisted on knowing what the Redistribution Bill was to be. The country was appealed to through meetings. Resolutions were passed, calling on the prime minister not to give way to the arrogant and intolerable claims of the House of Lords. On parliament meeting again what has happened? The prime minister has had to make terms with the House of Lords! The right hon. gentleman has had to retreat from the position he occupied, and assume another position at the dictation of the Lords. As far as I understand it, this House may consider itself utterly extinguished. The House of Lords has shown the enormous power it wields. There is a pleasing and comfortable theory that the Lords are dummies, and have powers but do not act upon them. I deny that the Lords are dummies. Not only have they power by the Constitution, but they use it far too frequently.'

Mr. Gladstone opposed Mr. Labouchere's amendment, vindicating the hereditary principle from Mr. Labouchere's aspersions by historical instances, especially the two Pitts and the two Earls of Derby.

On March 5, 1886, Mr. Labouchere moved, in the House of Commons, the following resolution as an amendment to

[1] Hansard's *Parl. Debates*, third series, vol. ccxciv. 141–165.

the motion, 'that Mr. Speaker do now leave the chair,' to go into committee of supply:[1]—

'That in the opinion of this House it is inconsistent with the principles of representative government that any member of either House of the Legislature should derive his title to legislate by virtue of hereditary descent.'

Mr. Labouchere made a rambling, inconsequent speech, in support of his amendment, suggesting his favourite *nostrum* of creating new peers to swamp the vote of the existing peers as the best remedy for the evils that he complained of. 'He really believed there was such patriotism on the benches on which he sat that he could find three hundred gentlemen[2] upon them who would ascend the political altar of their country, and sacrifice themselves in that way.'

Mr. Labouchere found no one to speak in support of his motion. Mr. Gladstone, Mr. Brodrick, and Mr. Radcliffe Cooke opposed it. Baron Ferdinand de Rothschild made the pertinent remark that 'the country had achieved historic greatness long before the democratic principle had asserted itself in the composition of the House of Commons.'[3] Mr. Gladstone pointed out that the strength of the House of Lords, collectively, rested on the 'useful local action' of its members, 'individually.' 'These men,' he said, 'have driven deep roots into the soil.' The amendment of Mr. Labouchere was defeated by 202 to 166, the Nationalists voting, to a man, in the minority.

On March 9, 1888, Mr. Labouchere moved the following resolution, as an amendment to the motion 'that Mr. Speaker do now leave the chair,' to go into committee of supply:[5]—

'That in the opinion of this House it is contrary to the true principles of representative government, and injurious to their efficiency, that any person should be a member of one House of the Legislature by right of birth, and it is, therefore, desirable to put an end to any such existing rights.'

Mr. Labouchere observed that it had been pointed out to

[1] Hansard's *Parl. Debates*, third series, vol. cccliii. 20–53.
[2] In 1894 he increased the number to 500.
[3] *Ibid.* 34. [4] *Ibid.* 41.
[5] Hansard's *Parl. Debates*, third series, vol. cccxxiii. 763–816.

him that the words of his resolution, as originally framed by him, might include Her Majesty; he had, therefore, substituted 'a member of one House of the Legislature' for 'a member of the Legislature.' Mr. Curzon, in replying to Mr. Labouchere, pointed out that there were 144 members of the House of Lords who did not sit there by right of birth, and to these his resolution would not apply. He further pointed out that *all our institutions were not representative.* There was the Throne, which was not founded on the representative, but on the hereditary principle. Then there was the Cabinet, which was not framed on the representative principle; it was nominated by one man, the prime minister, and the prime minister himself was not selected on the representative principle, but was nominated by the sovereign. The judges, too, were nominated by the sovereign. The House of Lords contained 23 cabinet ministers, 4 viceroys of India, 6 viceroys of Ireland, 4 governors-general of Canada, 8 other colonial governors, 6 ambassadors, 2 speakers of the House of Commons, 194 peers who had been members of the House of Commons, 78 members of Government (exclusive of the royal household), 8 judges, and 157 peers who had served in the navy or army. To contend that such a house was not a representative chamber was an abuse of language. There had been 300 creations of peerages in the present reign, and 200 *of these had been the creations of Liberal Prime Ministers*, Mr. Gladstone being responsible for 80. They might have representatives of whatever element they pleased in a Second Chamber, but it would be found that a Radical majority, if temporarily secured, could not be permanently retained, and that the Conservatives would, in the long run, have the preponderance.

Mr. W. H. Smith, the First Lord of the Treasury, was very amusing on Mr. Labouchere, as 'the legislative centre of gravity.' He quoted the language of a manifesto of Mr. Gladstone in 1885:—'I hope that, in the reconstruction of the House of Lords, when it arrives, a reasonable share of power may be allowed, under wise conditions, to the principle of *birth*.'

Mr. John Morley watered down Mr. Labouchere's resolu-

tion in the most extraordinary manner:—'In voting against the motion that the Speaker leave the chair, what I, at least, vote is this, that the time has arrived for the discussion of the whole question!' He added, 'I am not going into that old story of fifty years of legislation by the House of Lords.'

It is not surprising that, so watered down, Mr. Labouchere's amendment secured the votes of Sir William Harcourt, Mr. Campbell Bannerman, Mr. H. H. Fowler, Mr. Shaw Lefevre, Mr. Mundella, Sir George Trevelyan—in fact, of all the leaders of the Gladstonian party who were present. The Marquess of Hartington twitted them with going against the principles enunciated by Mr. Gladstone in 1886. Nevertheless, Mr. Labouchere's motion, thus watered down, was defeated by a much larger majority than in 1886—223 to 162. Of course the Nationalists were, as usual, in the minority.

Mr. Cyril Dodd is an acute lawyer, and yet he makes this extraordinary suggestion:—

'If it became absolutely necessary to put an end to the House of Lords, I have little doubt that the way in which it will be done will be by the exercise of the royal prerogative. The royal prerogative is in the hands of the prime minister of the day, and he, in truth, exercises it. It will be by his exercise of it that *no writs of summons will be sent to peers*, whenever the time comes to summon them to parliament, and by that simple expedient the House of Lords would cease to exist.'[1]

The Queen would be quite within her right in dismissing the prime minister, if he made such an unconstitutional proposal to her, and calling another prime minister into her counsels, as her grandfather did with Mr. Fox. But cannot Mr. Dodd see that the only effect of not summoning the peers at the commencement of a parliament, which is the only period when it could be attempted, would be to *bring all legislation to a dead-lock*? The House of Commons would be powerless to carry a single act, as, by the law of the land, no bill can become an act without the sanction of the House of Lords.

The absurdity of this suggestion struck the London Liberal

[1] *Daily News*, February 8, 1894. Speech to his constituents at Coggeshall, Essex.

and Radical Union so forcibly, that, although they wanted to 'end the House of Lords,' the proposer of this suggestion of 'how to do it,' Mr. Gillam, could not find a seconder.[1]

Mr. Spalding,[2] referring to such a 'suggestion,' made in some other quarter, writes: 'The suggestion that the Crown should be advised to refuse to summon the peers to parliament is too gross a breach of modern constitutional practice to be worth considering.'

I am surprised to find that so leading a member of the Gladstonian party as Sir J. Kitson should, in addressing his constituents at Slaithwaite, have no better alternative to offer than that the House of Lords (or its veto) should be abolished *by royal warrant*, or that somebody should 'forget to send to the House of Lords the summonses, which their lordships were accustomed to receive, to meet the Queen and her faithful Commons.'[3]

Can Sir J. Kitson point to any statute which authorises the Queen to abolish the House of Lords, as essential a part of the Constitution as the monarchy itself? Will he dare to say that the House of Lords, whose assent is necessary to every law, is itself illegal, and is only kept in existence by some statutory power of the Crown which Her Majesty may use for its destruction?

When Mr. Frederic Harrison threatened the House of Lords with being swamped by the elevation of '500 sweeps' to the peerage,[4] Lord Salisbury's reply[5] was that *the House of Lords would refuse to admit them.* 'The 500 sweeps would, no doubt, be remembered in history as Mr. Gladstone's "lords in waiting."' The House of Commons has exercised the power of refusing to admit members whose names have been sent in by the returning officer as duly elected; and the House of Lords refused to admit peers in 1711, 1782, and 1856.

[1] See the *Times*, Tuesday, February 13, 1894.
[2] *The House of Lords*, chap. xix. p. 235, n. (1).
[3] *Times*, April 9, 1894.
[4] *Fortnightly Review*, September 1892, p. 276.
[5] *National Review*, November 1892, pp. 291, 292; article on 'Constitutional Revision.'

Mr. Labouchere is not content with 500 new peers; he wants at least 640, pledged to vote for their own extinction, and that of the House to which they belong![1]

The Earl of Rosebery made some sensible observations on this suggested means of swamping the House of Lords in the course of his visit to Birmingham:—

'I have always been rather a mender than an ender, if only for one very simple reason, that I have never yet met a reasonable human being who could tell me a constitutional measure by which you could put an end to the House of Lords. It can only be done by a bill passed in both Houses of Parliament, putting an end to one branch of the legislature. I have no idea how you can get that branch of the legislature to decree its own sentence of death. It is said that a large creation of peers, some 500 or 600, would obtain the desired result; but it is very doubtful if the Crown could be called upon, or requested, to create an enormous army of peers, for the purpose of putting an end to one branch of the legislature. At any rate, it would be a very important strain on the Constitution. But there is this further objection. When you get your peers inside the House of Lords, *are you quite certain what they will do*? We have a somewhat bitter experience in that line. It is said that the peers created by Mr. Gladstone himself, who voted against the Home Rule Bill, would have been sufficient to procure its rejection. Well, those peers were presumably put in by Mr. Gladstone under the impression that they would support his policy.'[2]

Lord Rosebery added the significant words which I commend to the notice of those who wish to confine the legislative functions of the Upper House to a suspensory veto: 'Even the task of depriving it of its powers to thwart the will of the House of Commons you will find not unattended with practical difficulties.'

Lord Tweedmouth (formerly Mr. Marjoribanks) told the

[1] See *Truth*, February 22, 1894.

[2] *Times*, May 25, 1894. Mr. Labouchere's very lame reply upon Lord Rosebery appeared May 31, 1894, in *Truth*. ('A little Guidance and Inspiration.')

'Eighty Club' that the 'task' would be a 'dangerous' one for 'the Liberal party.'

Mr. Labouchere's action on March 13, 1894, will be fresh in the recollection of my readers. He was greatly disappointed that there was no mention in the address in reply to the speech from the Throne of any means of ignoring the House of Lords, and he moved the following amendment to the address [1]:—

'We humbly pray your Majesty that the power now enjoyed by persons not elected to parliament by the possessors of the parliamentary franchise to prevent bills being submitted to your Majesty for your royal approval shall cease, and we respectfully express the hope that, if it be necessary, your Majesty will, with and by the advice of your responsible ministers, use the power vested in your Majesty to secure the passing of this much-needed reform.'

The Chancellor of the Exchequer [2] said:—'The question I have to ask myself is, "Can I vote for the resolution moved by my hon. friend?" I do not quite understand what he means. He begins by "humbly praying Her Majesty that the power now enjoyed" by the House of Lords shall cease. Yes, but how is Her Majesty to make that power cease? My hon. friend is assuming that that power is in the Crown. ("No," from Mr. Labouchere.) That is the meaning of his words.'

Mr. Labouchere:—'I assume that Her Majesty acts by the advice of her responsible ministers, and when I used the word "Majesty" I used it more as a technical form than anything else. I used it as it is used in the address. I want the government to bring in a bill.'

The Chancellor of the Exchequer:—'That is not what he says in his resolution. He prays the Crown to mend the House of Lords. That, indeed, is a proposition for which any member can vote. The second part of his resolution is, "And we respectfully express the hope that, if it be necessary, your Majesty will use the power vested in your Majesty to secure the passing of this much-needed reform." But now he suggests that there should be created 500 new peers, and this after rather censuring the recent creation of a few new

[1] *The Times*, Wednesday, March 14, 1894. [2] Sir William Harcourt.

peers. He desires, if this resolution passes, to give the Government instructions from the House to submit to-morrow the names of 500 peers who are to be created on the spot. Where is my hon. friend going to get them?'

Mr. Labouchere:—'I have no doubt we could get 500 stalwarts, who would sacrifice themselves in the public interest.'

The Chancellor of the Exchequer:—'Has he the list of his stalwarts ready? I do not think the method he proposes is a practical one, but I do not desire to pursue criticism of so grave a subject in that tone.'

The House divided:—

For the amendment	147
Against	145
Majority against the Government	2

About half of the majority were Nationalists, who eagerly embraced the opportunity of attacking the House of Lords, on account of its rejection of the Home Rule Bill. The other half were Radicals, who abandoned Mr. Labouchere as soon as they found that their 'cave' imperilled the existence of the Government, and would not have voted with him if they had anticipated that the amendment would have been carried.

The next morning Sir William Harcourt said:—'We are of opinion that the address, with the addition carried last night, does not express or convey the well-considered and deliberate judgment of the majority of this House. The course which we intend to pursue is this:—When the address, in its present form, is put from the chair, we shall vote against that address. It will then be possible for the Government to move a *new* address to the Crown.'

On the evening of the same day *the address, as amended on Mr. Labouchere's motion, was negatived*, amidst loud Opposition laughter.

The Chancellor of the Exchequer:—'I have now to move that the following address be presented in answer to the gracious speech from the Throne——'

Colonel Saunderson :—'Mr. Deputy Speaker, I wish to ask you whether it is not contrary to the immemorial practice of this House for the mover of the address not to wear the uniform befitting his rank? If you, sir, give me an affirmative answer, as I expect will be the case, I shall ask for leave to move the adjournment of the House for twenty minutes, so as to give the right hon. gentleman an opportunity of arraying himself in the garments suitable to the dignified position which he now fills.' (Laughter.)

The Chancellor of the Exchequer :—'I do not think, sir, that either you or I need take any notice of the manner in which gentlemen opposite think fit to treat the Speech from the Throne. The address that I propose in answer to the Speech from the Throne is as follows :—

'Most Gracious Sovereign,—We, your Majesty's most dutiful and loyal subjects, the Commons of the United Kingdom of Great Britain and Ireland, in parliament assembled, humbly assure your Majesty that the measures recommended to our consideration shall receive our most careful attention, and we beg leave to thank your Majesty for the most gracious speech which your Majesty has addressed to both Houses of Parliament.'

Mr. J. Morley :—'I beg to second the motion.'

The Deputy Speaker then put the motion, which was agreed to at once, *nemine contradicente*.[1]

Thus ended a constitutional crisis which, as Mr. Balfour pointed out, was unparalleled 'in our parliamentary history' —'that the address to Her Majesty should have to be recalled on the motion of the very persons who originally proposed it—that they should have to reject their own address, as amended by their own supporters—reject it with contempt—and bring forward in language unfamiliar to our ears, and unknown to our precedents, a new form of address, in which we are to express our thanks to Her Most Gracious Majesty.'

Mr. Labouchere had to 'eat humble pie,' and the fare nauseated him no little; withal, he supported the government subsequently on a critical division.

[1] The *Times*, Thursday, March 15, 1894.

I will conclude this part of my subject with an extract from Mr. Spalding:—

'Down to the present time one of the best features of our constitutional system has been that measures of practical reform, once achieved, have been acquiesced in and respected by political opponents, when they have acceded to office, however strenuously those opponents may have resisted them whilst they were in progress. This advantage has been to some extent due to the fact that the measures in question have passed the ordeal of the House of Lords. But if the winnowing process which is effected by a Second Chamber be entirely done away with, will that traditionary respect be maintained in the future? Let us suppose the case that a Liberal Government, acting through a single House of Parliament, and the Crown has been in office for a considerable period, and has effected several reforms which have been strenuously opposed by the Conservatives. They then go to the country, and, after a general election, they find themselves in a minority. Now what in that case is the mandate of the nation to the new government? Clearly the nation may be deemed to have given a mandate for the *modification or repeal* of the measures criticised.'[1]

2.—The Abolition of the House of Commons

If the House of Commons defies the opinion of the civilised world, and insists on being the sole power in the State, its doom and that of the Empire are sealed.[2]

The 'decline' of the House of Commons is on the lips of every one, and may not improbably be the precursor of its 'fall.'

Speaking in the House of Lords on August 14, 1894, Lord Salisbury said[3]:—

[1] *The House of Lords; an Anomaly and a Danger*, by T. A. Spalding, LL.B. Published by the 'Eighty Club' (1894), p. 36.

[2] 'It is curious to notice how soon the abolition of the monarchy and of the Upper House was followed by the practical Abolition of the House of Commons.' (*The House of Lords; a Retrospect and a Forecast*, by T. A. Spalding, chap. iv. p. 37.)

[3] *The Times*, August 15, 1894.

'If I look to the past, I quite admit that Second Chambers are not immortal. I see that in France six, or, I think, seven Second Chambers have disappeared in the course of this century, but I observe also that in every case the popular assembly that sat with the Second Chamber disappeared at the same time. (Laughter.) If the noble lord will carry his historical recollection back he will, I think, find that what happened 250 years ago does not differ very much in its indications from the examples I have cited. Your lordships will remember in "Quentin Durward," when Louis XI., intending evil to Martius Galeotti, his astronomer, asks him to prophesy when he, the astronomer, would die, the reply of the astronomer was, "I cannot tell that, with respect directly to myself; I can only tell with reference to another; but I shall die three days before your majesty.' (Laughter.) 'If the noble lord insists on my casting the horoscope of this House, I say it will perish a few months before the House of Commons.' (Laughter.)[1]

Speaking at the demonstration of the 'Social Democratic Federation,' in Trafalgar Square on August 5, 1894, Mr. H. M. Hyndman, who presided, observed amid cheers:—

'Much is said about the nefarious conduct of the Lords; little about the nefarious conduct of the Commons. The imbecility and cowardice of that capitalist assembly is worse than the obstruction of the Peers; therefore the "Social Democratic Federation" refuses to join in any agitation to overthrow the latter, unless it also aims at overthrowing the House of Commons, as at present constituted.'

'The constant intervention of the House of Commons in the proceedings of the executive, and of the constituencies in the proceedings of the "House," ' says Mr. Lecky,[2] 'may profoundly alter its character as a legislative body. Governments living from day to day, looking only for immediate popularity and depending on the fluctuating and capricious favour of great multitudes who have no settled political

[1] *Daily News*, August 6, 1894. The *Daily Chronicle* carefully omits the last paragraph!

[2] *History of England*, vol. iii. chap. xi. p. 221.

opinions, may gradually lose all firmness and tenacity, and all power of muscular contraction; all power of restraining, controlling, or resisting may thus pass out of the body politic. The habit of sacrificing present advantages for the attainment of a distant object, or for the benefit of generations yet unborn, which is the essence of true national greatness, may decline. England is the centre of a vast, complex, and highly artificial Empire, which can only be maintained by the constant exercise of a very large amount of political wisdom and virtue.'

Can anything be more preposterous than to hope to rule the British Empire, composed, as it is, so largely of colonies wedded to the bicameral system, by a single Chamber, with six million of electors, the barest majority being sufficient to carry the most revolutionary measure, by the aid of the gag, the clôture, and the guillotine, and divisions, to save time, taken by electricity?'[1]

On the other hand, the House of Commons, as at present constituted, stands in the way of Imperial federation. A voice from Australia has sounded a note of warning[2]:—

'A time is coming when, if Imperial federation is to be seriously thought of, the House of Commons will require to be either ended or mended, abolished or reformed.

'A large number of those persons in the British colonies who favour the perpetual union of the colonies with the British Isles, are in favour of the abolition of the House of Commons, and the substitution of an entirely new body in its stead.'

Mr. Macpherson looks forward to the representation of Canada, Australia, and, perhaps, the Cape, in an Imperial parliament.[3]

The House of Lords is well fitted to be an integral part of such a parliament. The House of Commons is not.

'Do you object to political assemblies because they go

[1] Divisions taken by electricity, 'to save time,' is Mr. Stansfeld's suggestion.

[2] *The Baronage and the Senate*, by W. C. Macpherson, p. 200.

[3] *Ibid.* p. 174.

wrong?' asked the Duke of Argyll at Glasgow.[1] 'In that case you will abolish the House of Commons.'

CHAPTER XXXI

DOWN WITH —— DEMONSTRATIONS![2]

THE agitation against the House of Lords is 'hollow, spurious, and out of touch with democratic aspirations.'[3]

Mr. Chamberlain, in his magnificent oration at Leeds,[4] pointed out that *social reforms* (which were neglected by the Government because they afforded no handle against the House of Lords) were what the working-classes demanded.

'Mr. Chamberlain,' says an able journal,[5] once-strongly Gladstonian, 'did good service at Leeds in pointing out a very real danger which confronts the country—the danger of the establishment of a sovereign unchecked, and? uncheckable single House, armed with supreme powers, and able by a single vote to change the whole face of the Constitution.

'The whole of our lives and liberties will be at the mercy of a snap vote. "That frightful energy," which Burke saw and deplored in the French Convention—a sovereign and single House—will be at the disposal of any combination of groups which can muster a bare majority. Mr. Chamberlain did not exaggerate the evil when he declared that "386 men, one more than the minority, under this system would be more arbitrary than any autocrat that has ever existed." "You are asked," he went on, "to put the sacred liberties of this country, your lives, your property, absolutely at their disposal. Are you certain that this majority will ever be a British majority? It must be what it has been before—a majority in which the balance is held by men whose character and proceedings are alien to the British spirit, by men

[1] On November 1, 1893. *Times*, November 2, 1893.
[2] This appropriate phrase occurs in the *Weekly Graphic* of September 1, 1894.
[3] *Ibid.*
[4] Reported in *Times*, Thursday, September 27, 1894.
[5] The *Spectator*, September 29, 1894.

who are subsidised by foreign gold, by men who may be nominated by a foreign organisation. What sort of legislation, what sort of administration, do you expect from a majority of this kind, from such a despotism, if you are weak enough to create it?" Mr. Chamberlain might have put it even more strongly than this. Being governed by the unchecked will of the majority in a single House means, in practice, and under the working of our party system, being governed, not by the main majority, but by *the majority of the majority*.'

If the veto of the House of Lords were abolished, our liberties would not be worth half a year's purchase. There would be nothing to hinder a chance majority of 'log-rollers' in the House of Commons from repealing, at the bidding of the Irish Nationalists, all the guarantees of the civil and religious freedom of Englishmen. The Habeas Corpus Act, the Petition of Right, the Bill of Rights, the Act of Settlement, nay, Magna Charta itself, all might have to go into the limbo of forgetfulness by a majority of one, and the struggle for our liberties have to be begun afresh.

'Do you think,' asked Lord Salisbury at Edinburgh,[1] 'it is possible to continue the government of the Indian Empire, in which 200,000 govern 280,000,000 of people, do you think that that arrangement can continue, if resolutions initiated by faddists or log-rollers in the House of Commons can come from across the water and brand your Indian Government with foolishness, and give to the natives the feeling that all their dearest interests, their religion, their customs, are at the mercy of an ignorant assembly beyond the sea, whose deliberations they cannot influence, and from whose decision they have no appeal?'

The organisers of the 'demonstrations' happily lack 'the invincible locks'; but they seem eager to play the part of blind Samsons, longing to pull down the whole fabric of the British Constitution, even although they themselves must inevitably perish in the ruins. They look at that Constitution

[1] On Tuesday, October 30, 1894. See the *Times* of October 31, 1894.

through the narrow apertures of their own committee-rooms; and its grand proportions appear, naturally enough, dwarfed and stunted to their contracted vision. They are deliberately playing into the hands of the enemies of the British Empire; and 'the intelligent foreigner' sees, with amazement, their rash and unpatriotic proceedings. The *République Française* declares that 'any tampering with the British Constitution will bring down the entire edifice.'

The *Liberté* is not less emphatic:—'It cannot be disguised that, whenever England begins to demolish her institutions, there will be a general collapse.'

The *National Zeitung* fastens the blame of all this rightly on Mr. Gladstone, who inflamed the worst passions of the democracy, and 'declared war against an ancient Constitution.' 'With Mr. Gladstone departs the greatest and most dangerous enemy of the British Constitution. The prestige of the representative system has suffered severely under him.'

It does not require much, or, indeed, any intelligence, to cry 'Boo-oo-ooh!' at the mention of the name of 'the House of Lords' by some truculent and vapouring orator, and then join in the shout, 'Down with *it*!' and hold up a hand in favour of a ridiculous resolution to abolish it.

I would say to the agitators in all sincerity:—

'Do not, like the Irish Nationalists, mistake your own selfishness and greed for patriotism—the working of your own evil passions for generous indignation—abuse for argument.

'Study the constitutional history of your country and learn that you cannot without civil war, tear up the Constitution by the roots, and abolish THE HOUSE OF LORDS, which has existed since the time of your Anglo-Saxon forefathers, and wrung from Anglo-Norman kings and their successors a great part of the liberties which you enjoy.

'Cherish the House of Commons as the foremost amongst the representative assemblies of the world, but do not aim at making it the sole power in the State.

'Observe how the vast British Empire, outside these little islands, looks to THE THRONE, and not to the British parlia-

ment, as its connecting link—its one point of union, and treat the monarchy with proper respect.

'Do not think it a fine thing to trace your genealogy to the Regicides, who quenched in blood and anarchy the light of constitutional freedom, and were themselves spurned with supreme contempt by the military despotism to which they betrayed the liberties of the people.

'Remember the words of a distinguished Liberal:[1]—"Blending," as it does, "the democracy with the nobility and monarchy," ours 'is the only form of free government which experience has shown to be reconcilable with widely-extended Dominions.'

[1] The Right Hon. Sir James Mackintosh, in his *History of England*, vol. i. p. 221 (see Chap. IV. *supra*).

APPENDIX

THE APPELLATE JURISDICTION ACT, 1876
39 & 40 VICT. CAP. 59

1. This Act may be cited for all purposes as 'The Appellate Jurisdiction Act, 1876.'

2. This Act shall, except where it is otherwise expressly provided, come into operation on the first day of November one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

3. Subject, as in this Act mentioned, an appeal shall lie to the House of Lords from any order or judgment of any of the courts following; that is to say,

(1) Of Her Majesty's Court of Appeal in England; and

(2) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

(3) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be *reviewed before Her Majesty the Queen in Her Court of Parliament*,[1] in order that the said Court may

[1] Great constitutional principles are enshrined in this section by the introduction of the words 'Before Her Majesty the Queen in Her Court of Parliament.' We have already seen that 'the High Court of Parliament' really is the House of Lords.

The concluding portion of the section is taken from the ancient writ of error, 'that the record being reviewed, we may further cause to be done thereupon what of right, and according to the law and custom of England, ought to be done.

determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

(1) The Lord Chancellor of Great Britain for the time being; and

(2) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and

(3) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

6. For the purpose of aiding the House of Lords in the hearing and determination of appeals, Her Majesty may, at any time after the passing of this Act, by letters patent, appoint two qualified persons to be Lords of Appeal in Ordinary, but such appointment shall not take effect until the commencement of this Act.

A person shall not be qualified to be appointed by Her Majesty a Lord of Appeal in Ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this Act described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament.

There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall, by virtue and according to the date of his appointment, be entitled during his life to rank as a Baron by such style as Her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs.

On any Lord of Appeal in Ordinary vacating his office, by death,

resignation, or otherwise, Her Majesty may fill up the vacancy by the appointment of another qualified person.

A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a Privy Councillor, to sit and act as a member of the Judicial Committee of the Privy Council.[1]

7. Her Majesty may by letters patent grant to any Lord of Appeal in Ordinary, who has served for fifteen years, or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity, to be continued during his life, equal in amount to the pension which might under similar circumstances be granted to the Master of the Rolls, in pursuance of the Supreme Court of Judicature Act, 1873.

Previous service in any office described in this Act as a high judicial office shall, for the purposes of pension, be deemed equivalent to service in the office of a Lord of Appeal in Ordinary under this Act.

The salary and pension payable to a Lord of Appeal in Ordinary shall be charged on and paid out of the Consolidated Fund of the United Kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

8. For preventing delay in the administration of justice, *the House of Lords may sit* and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, *during any prorogation of Parliament*, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House, in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament

[1] The object of the present section is to strengthen the point of connection between the Judicial Committee of the Privy Council and the House of Lords as the ultimate courts of appeal for the British empire. By sec. 6 *supra*, the two Lords of Appeal in Ordinary already appointed are to 'sit and act as members of the Judicial Committee of the Privy Council.'

had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

9. If on the occasion of a dissolution of Parliament Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under her Sign Manual, to authorise the Lords of Appeal, in the name of *the House of Lords, to hear and determine appeals during the dissolution of Parliament*, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may, in the name of the House of Lords, exercise the jurisdiction of the House of Lords accordingly.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

11. After the commencement of this Act error shall not lie to the House of Lords, and an appeal shall not lie from any of the courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

12. Except in so far as may be authorised by orders of the House of Lords an appeal shall not lie to the House of Lords from any court in Scotland or Ireland in any case, which, according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

13. Nothing in this Act contained shall affect the jurisdiction of

the House of Lords in respect of any error or appeal pending therein at the time of the commencement of this Act, and any such error or appeal may be heard and determined, and all proceedings in relation thereto may be conducted, in the same manner in all respects as if this Act had not passed.

14. Whereas by the Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter ninety-one, intituled 'An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council,' Her Majesty was empowered to appoint and did appoint four persons qualified as in that Act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as are in the said Act mentioned, in this Act referred to as paid judges of the Judicial Committee of the Privy Council:

And whereas the power given by the said Act of filling any vacancies occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and Her Majesty has no power to fill any such vacancies:

Be it enacted, that whenever any two of the paid judges of the Judicial Committee of the Privy Council have died or resigned, Her Majesty may appoint a third Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary hereinbefore authorised to be appointed, and on the death or resignation of the remaining two paid judges of the Judicial Committee of the Privy Council, Her Majesty may appoint a fourth Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary aforesaid; and may from time to time fill up any vacancies occurring in the offices of such third and fourth Lord of Appeal in Ordinary.

Any Lord of Appeal in Ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a Lord of Appeal in Ordinary appointed in pursuance of the power in this Act before given to Her Majesty.

24. Section sixteen of the Act for better enforcing Church discipline, passed in the session of the third and fourth years of the reign of Her present Majesty, chapter eighty-six, and sections twenty, twenty-one, and fifty-five of the Supreme Court of Judicature Act, 1873, and section two of the Supreme Court of Judicature Act, 1875, shall be repealed (with the exception of so much of section two as declares the day on which that Act is to commence).

25. In this Act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

'High judicial office' means any of the following offices; that is to say,

The office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of one of Her Majesty's superior courts of Great Britain and Ireland:

'Superior courts of Great Britain and Ireland' means and includes,—

As to England, Her Majesty's High Court of Justice and Her Majesty's Court of Appeal, and the superior courts of law and equity in England as they existed before the constitution of Her Majesty's High Court of Justice; and

As to Ireland, the superior courts of law and equity at Dublin; and

As to Scotland, the Court of Session:

'Error' includes a writ of error or any proceedings in or by way of error.

APPELLATE JURISDICTION ACT, 1887.
50 & 51 Vict. cap. 70 [1]

Whereas it is expedient to amend the Appellate Jurisdiction Act, 1876.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Whereas it is expedient that any Lord of Appeal, as defined by the Appellate Jurisdiction Act, 1876, notwithstanding that he may not be a Lord of Appeal in Ordinary within the meaning of that Act, should be empowered to take his seat and the oaths at the sittings of the House of Lords for hearing and determining appeals during the prorogation of Parliament: Be it enacted that, notwithstanding anything in the eighth section of the said Act contained, every Lord of Appeal shall be empowered to take his seat and the oaths at any such sitting of the House of Lords during prorogation.

[1] The 50 & 51 Vict. cap. 70 received the royal assent on September 16, 1887.

2. The sixth section of the Appellate Jurisdiction Act, 1876, shall be construed and take effect, as well in respect of any Lord of Appeal in Ordinary heretofore appointed under that Act, as of any such Lord hereafter appointed, so as to entitle any person so appointed to sit and vote as a member of the House of Lords during his life as fully as if the words 'during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer' had been omitted from the said section.[1]

3. The Judicial Committee of the Privy Council as formed under the provisions of the first section of the Act of the third and fourth William the Fourth, chapter forty-one, intituled 'An Act for the better administration of Justice in His Majesty's Privy Council,' shall include such members of Her Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876, and this Act, described as high judicial offices.

4. Any person who shall in virtue of the thirtieth section of the Act of the third and fourth William the Fourth, chapter forty-one, attend the sittings of the Judicial Committee of the Privy Council, shall be deemed to be included as a member of the said Committee for all purposes, and shall, if there be only one such person, be entitled to receive the whole amount of the sums by the said section provided, that is to say, eight hundred pounds for every year during which he shall so attend; but if there shall at any time be two such persons, they shall severally be entitled to the sums provided in the said section.

5. The expression 'high judicial office' as defined in the twenty-fifth section of the Appellate Jurisdiction Act, 1876, shall be deemed to include the office of a Lord of Appeal in Ordinary and the office of a member of the Judicial Committee of the Privy Council.

6. This Act may be cited as the Appellate Jurisdiction Act, 1887.

[1] This is a very important alteration in the principle upon which the appellate jurisdiction of the House of Lords was strengthened by the addition of Lords of Appeal in Ordinary. By a stroke of the pen (so to speak) the Lords of Appeal in Ordinary are changed from ex-officio peers into life peers. Retirement does not affect their right to continue to sit in Parliament.

THE QUEBEC GOVERNMENT ACT, 1791
31 GEO. III. CAP. 31

6. Whenever His Majesty, His Heirs or Successors, shall think proper to confer upon any subject of the Crown of Great Britain, by Letters Patent under the Great Seal of either of the said Provinces, any Hereditary Title of Honour, Rank, or Dignity of such Province, descendible according to any Course of Descent limited in such Letters Patent, it shall and may be lawful for His Majesty, His Heirs or Successors, to annex thereto, by the said Letters Patent, if His Majesty, His Heirs or Successors, shall so think fit, an Hereditary Right of being summoned to the Legislative Council of such Province, descendible according to the Course of Descent so limited with respect to such Title, Rank, or Dignity; and that every Person on whom such Right shall be so conferred, or to whom such Right shall severally so descend, shall thereupon be entitled to demand from the Governor, Lieutenant Governor, or Person administering the Government of such Province, his Writ of Summons to such Legislative Council, at any Time after he shall have attained the Age of Twenty-one Years, subject nevertheless to the Provisions hereinafter contained.

7. Provided always, that when and so often as any Person to whom such Hereditary Right shall have descended shall, without the Permission of His Majesty, His Heirs or Successors, signified to the Legislative Council of the Province by the Governor, Lieutenant Governor, or Person administering the Government there, have been absent from the said Province for the Space of Four Years continually, at any Time between the Date of his succeeding to such Right and the Time of his applying for such Writ of Summons, if he shall have been of the Age of Twenty-one Years or upwards at the Time of his so succeeding, or at any Time between the Date of his attaining the said Age and the Time of his so applying, if he shall not have been of the said Age at the Time of his so succeeding; and also when and so often as any such Person shall at any Time, before his applying for such Writ of Summons, have taken any Oath of Allegiance or Obedience to any Foreign Prince or Power, in every such Case such Person shall not be entitled to receive any Writ of Summons to the Legislative Council by virtue of such Hereditary Right, unless His Majesty, His Heirs or Succesors, shall at any Time think fit, by Instrument under His or their Sign Manual, to direct that such Person shall

be summoned to the said Council; and the Governor, Lieutenant Governor, or Person administering the Government in the said Provinces respectively, is hereby authorised and required, previous to granting such Writ of Summons to any Person so applying for the same, to interrogate such Person upon Oath touching the said several Particulars, before such executive Council as shall have been appointed by His Majesty, His Heirs or Successors, within such Province, for the Affairs thereof.

8. Provided also, that if any Member of the Legislative Councils of either of the said Provinces respectively shall leave such Province, and shall reside out of the same for the Space of Four Years continually, without the permission of His Majesty, His Heirs or Successors, signified to such Legislative Council by the Governor or Lieutenant Governor, or Person administering His Majesty's Government there, or for the Space of Two Years continually, without the like Permission, or the Permission of the Governor, Lieutenant Governor, or Person Administering the Government of such Province, signified to such Legislative Council in the Manner aforesaid; or if any such Member shall take any Oath of Allegiance or Obedience to any Foreign Prince or Power, his seat in such Council shall thereby become vacant.

9. Provided, also, that in every case where a Writ of Summons to such Legislative Council shall have been lawfully withheld from any Person, to whom such Hereditary Right as aforesaid shall have descended, by reason of such absence from the Province as aforesaid, or of his having taken an Oath of Allegiance or Obedience to any Foreign Prince or Power, and also in every case where the seat in such Council of any Member thereof having such Hereditary Right as aforesaid, shall have been vacated by reason of any of the causes hereinbefore specified, such *Hereditary Right shall remain suspended* during the life of such Person, unless His Majesty, his Heirs or Successors, shall afterwards think fit to direct that he be summoned to such Council; but that on the death of such Person, such right, subject to the provisions herein contained, *shall descend to the Person who shall next be entitled thereto*, according to the course of descent limited in the Letters Patent, by which the same shall have been originally conferred.

10. Provided also, and be it further enacted, that if any Member of either of the said Legislative Councils shall be attainted for treason in any court of law within any of His Majesty's dominions, his seat in such Council shall thereby become vacant, and any such Hereditary Right as aforesaid, then vested in such Person, or to

be derived to any other Person through him, shall be utterly forfeited and extinguished.

11. Provided, also, that whenever any question shall arise respecting the Right of any Person to be summoned to either of the said Legislative Councils, respectively, or respecting the vacancy of the seat in such Legislative Council of any Person having been summoned thereto, every such question shall by the Governor, or Lieutenant Governor of the Province, or by the Person administering the government there, be referred to such Legislative Council, to be by the said Council heard and determined; and that it shall and may be lawful either for the Person desiring such Writ of Summons, or respecting whose Seat such question shall have arisen, or for His Majesty's Attorney General of such Province in His Majesty's name, *to appeal* from the determination of the said Council, in such case, to *His Majesty in his Parliament of Great Britain;* and that the judgment thereon of His Majesty in his said Parliament shall be final and conclusive to all intents and purposes whatever.

THE PRISONERS' COUNSEL ACT, 1836

6 & 7 WILL. IV. CAP. 114

WHEREAS it is just and reasonable that persons accused of Offences against the Law should be enabled to make their full Answer and Defence to all that is alleged against them: Be it therefore enacted by the King's most excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the First Day of *October* next all Persons tried for Felonies shall be admitted, after the Close of the Case for the Prosecution, to make full Answer and Defence thereto, by Counsel learned in the Law, or by Attorney in Courts where Attornies practise as Counsel.

2. And be it further declared and enacted, That in all Cases of summary Conviction Persons accused shall be admitted to make their full Answer and Defence, and to have all Witnesses examined and cross-examined by Counsel or Attorney.

3. And be it further enacted, That all Persons who after the passing of this Act shall be held to bail or committed to Prison for any Offence against the Law shall be entitled to require and have, on Demand, (from the Person who shall have the lawful Custody thereof, and who is hereby required to deliver the same,) Copies

of the Examinations of the Witnesses respectively upon whose Depositions they have been so held to bail or committed to Prison, on Payment of a reasonable Sum for the same, not exceeding Three Halfpence for each Folio of Ninety Words: Provided always, that if such Demand shall not be made before the Day appointed for the Commencement of the Assize or Sessions at which the Trial of the Person on whose Behalf such Demand shall be made is to take place, such Person shall not be entitled to have any Copy of such Examination of Witnesses, unless the Judge or other Person to preside at such Trial shall be of opinion that such Copy may be made and delivered without Delay or Inconvenience to such Trial; but it shall nevertheless be competent for such Judge or other Person so to preside at such Trial, if he shall think fit, to postpone such Trial on account of such Copy of the Examination of Witnesses not having been previously had by the Party charged.

4. And be it further enacted, that all Persons under Trial shall be entitled, at the Time of their Trial, to inspect, without Fee or Reward, all Depositions (or Copies thereof) which have been taken against them, and returned into the Court before which such Trial shall be had.

5. And be it further enacted, That this Act may be amended, altered, or repealed by any Act or Acts to be passed in this present Session of Parliament; and that nothing herein contained shall extend to Scotland.

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